

EXHIBIT 6



Deposition of:
Matthew Shoemake

February 27, 2020

In the Matter of:
**Wapp Tech Limited Partnership et al v.
Micro Focus International PLC**

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IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
SHERMAN DIVISION

WAPP TECH LIMITED *
PARTNERSHIP AND WAPP TECH *
CORP. *
*
*
VS * CIVIL ACTION NO.
* 4:18-cv-469
*
*
BANK OF AMERICA CORP. *

ORAL DEPOSITION
OF
MATTHEW SHOEMAKE
FEBRUARY 27, 2020

ANSWERS AND DEPOSITION OF MATTHEW SHOEMAKE,
produced as a witness at the instance of the
Plaintiff, taken in the above-styled and -numbered
cause on the 27th day of February, 2020, from
9:15 a.m. to 2:42 p.m., before Deborah A. Copeland, a
Certified Shorthand Reporter in and for the State of
Texas, reported by machine shorthand at the offices of
Gibson Dunn, located at 2001 Ross Avenue, in
the City of Dallas, County of Dallas and State of
Texas, pursuant to the Rules of Federal Procedure.

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MATTHEW SHOEMAKE,

the witness, being first sworn, testified as follows:

EXAMINATION

BY MR. PARKER:

Q Good morning, Mr. Shoemake. My name is Rik

Parker. I'm on the phone from Wilmington, Delaware.

Have you ever been deposed before?

A I have been deposed before.

Q How many times?

A Nice to meet you, by the way. I'm glad to

hear that you -- I thought you may have been on the

West Coast, it's very early. So I'm happy to hear

you're on the East Coast.

Then to answer your question, I think

now it's probably over 30 times I've been deposed.

Q And have all of those depositions concerned

some aspect of patent litigation?

A No, not all of them. The vast majority have,

but there may be one or two exceptions.

Q What's the general subject matter of the

exceptions?

A So I think there are two exceptions. One of

them, there was a case that I testified in that had to

do with false advertising related to wifi, and so

there were not patents involved in that case. And

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there was also at one of my previous employers, there

was an employee that sued the company, so I guess it

had to do with a termination of employment issue and I

was deposed in that as well.

Q Roughly how many expert reports or

declarations have you prepared?

A You mean outside this case, correct? Just in

general?

Q Yes. Just in total over your career.

A I'm sorry. You asked about expert reports.

Anything else? Expert reports and declarations?

Q Yeah. I said declarations. Written versions

of you giving an expert opinion.

A Sure. So the answer is numerous. I would

have to -- I don't know the exact number, but I can

try to give an estimate. Total expert reports and

declarations, I also would not be surprised if it was

20 or 30, or north of 30, or in excess of 30.

Q To your knowledge, has the court ever

criticized one of your opinions?

A Not that I'm aware of.

Q Did you bring any documents with you today?

A I did not. I don't have any documents here

with me. I do have some documents that have been put

in front of me. I haven't looked at them, but I

<p style="text-align: right;">Page 6</p> <p>1 assume they're exhibits that maybe you sent.</p> <p>2 Q Yes. We'll get to those shortly.</p> <p>3 A Okay.</p> <p>4 Q When were you retained by Gibson Dunn for</p> <p>5 purposes of these actions?</p> <p>6 A I was thinking about that just this morning.</p> <p>7 It was the second half of last year. I don't know the</p> <p>8 exact month.</p> <p>9 Q And were you originally retained only to</p> <p>10 provide expert opinions as to -- well, let me start</p> <p>11 over again.</p> <p>12 When you were originally retained by</p> <p>13 Gibson Dunn, how many patents were you retained to</p> <p>14 provide expert opinions about?</p> <p>15 MR. JALALI: Objection. Form.</p> <p>16 A So I don't think that's the way the retention</p> <p>17 worked. I think that it was a general retention, and</p> <p>18 I don't recall there being any -- I think there was</p> <p>19 specificity to a case or cases, but I don't recall</p> <p>20 specificity to patents.</p> <p>21 Q (By Mr. Parker) Have you been retained</p> <p>22 for -- as to all three of the -- actually, let me</p> <p>23 just -- let's -- I guess it's already been marked.</p> <p>24 the court reporter has marked as Exhibit 34 a document</p> <p>25 that I hope you have in front of you or will have in a</p>	<p style="text-align: right;">Page 8</p> <p>1 your retention specific to a given action or did it</p> <p>2 include more than one action at that time?</p> <p>3 A I don't have my retention agreement in front</p> <p>4 of me. What I recall is that there was -- that it</p> <p>5 contains a list of multiple parties, but I don't have</p> <p>6 it in front of me. And I generally understand the</p> <p>7 retention to pertain to the WAPPs case that is brought</p> <p>8 and listed of the first page of Exhibit 34 against --</p> <p>9 well, I understand it to pertain to all three cases.</p> <p>10 And, more importantly, the declaration, Exhibit 34, is</p> <p>11 submitted on behalf of all defendants that are -- as I</p> <p>12 say in Paragraph Number 1. So it's for all three</p> <p>13 cases that are listed on the first page of Exhibit 34.</p> <p>14 Q And you referred to Paragraph 1 on Page 2 of</p> <p>15 Exhibit 34. That paragraph refers to three different</p> <p>16 patents, right?</p> <p>17 A It does. It refers to the 192, the 864 and</p> <p>18 678 patents.</p> <p>19 Q If you look at -- so I'm not quite sure how</p> <p>20 they put things together, but I believe your counsel</p> <p>21 helped me to attach all of the exhibits to Exhibit 34</p> <p>22 so it is a single complete -- let me just start out.</p> <p>23 Could you please look through Exhibit 34 and tell me</p> <p>24 whether or not you believe it's complete as you</p> <p>25 created it.</p>
<p style="text-align: right;">Page 7</p> <p>1 moment.</p> <p>2 (Exhibit 34 marked.)</p> <p>3 A I do. There's a stack and 34 is at the top</p> <p>4 of the stack. So what I will do, I'll take 34 and</p> <p>5 I'll set the rest of the stack to the side. If you</p> <p>6 want me to grab anything other than 34 out of the</p> <p>7 stack, I'm happy to do that as well.</p> <p>8 Q Let's start with Exhibit 34, please. Do you</p> <p>9 recognize that document?</p> <p>10 A I do.</p> <p>11 Q What is it?</p> <p>12 A This is the declaration that I submitted in</p> <p>13 this case regarding claim construction.</p> <p>14 Q And there are three different cases actually</p> <p>15 captioned on the front page of Exhibit 34, correct?</p> <p>16 A That's correct.</p> <p>17 Q Have you been retained in all three of those</p> <p>18 actions?</p> <p>19 A So my -- so if we look at Paragraph 1 of my</p> <p>20 report. So I have been retained to -- by counsel for</p> <p>21 the defendants, and that -- so this report is</p> <p>22 submitted on behalf of all the defendants in the case.</p> <p>23 Does that answer your question?</p> <p>24 Q Let me back up. When you were first retained</p> <p>25 at some point in the latter half of last year, was</p>	<p style="text-align: right;">Page 9</p> <p>1 A Give me one moment. I do see that there are</p> <p>2 exhibits here that were in the stack that I set aside,</p> <p>3 so give me one moment to analyze what I have here.</p> <p>4 Okay. So since this is by phone, it</p> <p>5 looks like I have Exhibit 34, which has -- I'll just</p> <p>6 tell you the exhibits I have, I have Exhibits 34, 35,</p> <p>7 36, and it looks like there's one more, and I have 37.</p> <p>8 I'm setting those aside. Previously I had set aside</p> <p>9 what looks to be Exhibits A through G, which I think</p> <p>10 go -- are part of, actually, Exhibit 34. So those are</p> <p>11 exhibits to the declaration that is the subject matter</p> <p>12 of today's deposition. And I have -- and I do have,</p> <p>13 it looks like a complete set of the exhibits, which is</p> <p>14 Exhibits A through G.</p> <p>15 Q Okay. Just so everybody is clear here, it's</p> <p>16 my intention that Exhibit 34 include the entirety of</p> <p>17 Dr. Shoemaker's declaration including the Exhibits A</p> <p>18 through G.</p> <p>19 If you would look at the Exhibit B to</p> <p>20 your declaration, and, in particular, Page 4 of</p> <p>21 Exhibit B, or it's numbered Page 4 of 14.</p> <p>22 A You broke up just a little bit. So you're</p> <p>23 asking me to go to Exhibit B of Exhibit 34, correct?</p> <p>24 Q Yes.</p> <p>25 A Okay. I have Exhibit B.</p>

<p style="text-align: right;">Page 10</p> <p>1 Q That's your CV, correct?</p> <p>2 A Exhibit B to Exhibit 34 of my declaration --</p> <p>3 I'm sorry. I have -- let me start over. Yes.</p> <p>4 Exhibit B to Exhibit 4 is my CV. It's a version of my</p> <p>5 CV dated February 19 of 2020.</p> <p>6 Q Okay. And if you would look at Numbered Page</p> <p>7 4 of that CV --</p> <p>8 A I'm there.</p> <p>9 Q -- there's a reference to a case involving</p> <p>10 WAPP Tech near the bottom of the page. Do you see</p> <p>11 that?</p> <p>12 A I do.</p> <p>13 Q And that reference refers to -- well,</p> <p>14 actually for what purpose were you retained in that</p> <p>15 action?</p> <p>16 MR. JALALI: Objection. Form. And I'll</p> <p>17 caution the witness not to reveal any privileged</p> <p>18 information.</p> <p>19 A So you said that action. So this item in my</p> <p>20 CV refers to the -- refers to my general retention in</p> <p>21 the actions that WAPP has brought against Micro Focus</p> <p>22 and the other defendants that are listed on Page 1 of</p> <p>23 Exhibit 34.</p> <p>24 Q (By Mr. Parker) The mention on Page 4 of</p> <p>25 your CV refers to the case being in the District of</p>	<p style="text-align: right;">Page 12</p> <p>1 my retention to be limited to a -- to a -- to a</p> <p>2 specific case. I understand that it -- for example,</p> <p>3 it's not just limited, if you're asking to the first</p> <p>4 case listed on Page 1 of Exhibit 34. I understand my</p> <p>5 retention to be applicable to not only the 192 patent</p> <p>6 and the 678 patent, but other patents that may arise</p> <p>7 in the case in the Eastern District of Texas or any</p> <p>8 cases in the Northern District of Delaware or any</p> <p>9 other districts or appeals courts.</p> <p>10 So I don't understand my retention to be</p> <p>11 limited to only the 192, only the 168 [sic], only, for</p> <p>12 example, Seattle Spinco or only Micro Focus.</p> <p>13 Hopefully that helps -- that's responsive to your</p> <p>14 question.</p> <p>15 Q Why, then, is there mention of two patents in</p> <p>16 that description, but not of the third patent?</p> <p>17 A Give me one moment. I don't know. I'd have</p> <p>18 to research that. I don't -- it -- it would be</p> <p>19 speculation, but it may be because -- it may be</p> <p>20 because my own action was to review those patents</p> <p>21 first and that just ended up how I listed it in my CV.</p> <p>22 But, of course, as I say in my declaration in this</p> <p>23 case, all three patents that I discuss in my</p> <p>24 declaration are from the same family.</p> <p>25 Q What did you do to prepare for today's</p>
<p style="text-align: right;">Page 11</p> <p>1 Delaware, correct?</p> <p>2 A It does. That's correct. I see that. I</p> <p>3 don't know if that's a typo or not. I would have to</p> <p>4 check. I, generally, in my CV try to keep a listing</p> <p>5 brief of these cases. So I don't know -- I'd have to</p> <p>6 go check records to see if that's a typo or not.</p> <p>7 Q Okay. Well, and it mentions -- the</p> <p>8 description there mentions two U.S. patents, correct?</p> <p>9 A It does. The 192 patent and the 678 patent.</p> <p>10 Q Were you originally not retained to</p> <p>11 provide --</p> <p>12 MR. PARKER: Was someone else talking,</p> <p>13 or was it just an echo that I had?</p> <p>14 THE WITNESS: That was the court</p> <p>15 reporter. You broke up just a little bit. Could you</p> <p>16 repeat your question since you broke up.</p> <p>17 Q (By Mr. Parker) Sure. I didn't actually</p> <p>18 finish it. Were you originally retained -- were you</p> <p>19 not originally retained to also provide opinions about</p> <p>20 the 864 patent that you now reference in Paragraph 1</p> <p>21 of your declaration, Exhibit 34?</p> <p>22 A Let me answer it this way since there was a</p> <p>23 negative in your question.</p> <p>24 So my retention is broad and is not</p> <p>25 limited to just these two patents. I don't understand</p>	<p style="text-align: right;">Page 13</p> <p>1 deposition?</p> <p>2 A I reviewed documents. I reviewed my</p> <p>3 declaration. I reviewed the three patents that my</p> <p>4 declaration is directed toward, those patents listed</p> <p>5 in Paragraph 1 of my declaration. I also met with</p> <p>6 counsel for defendants yesterday at their offices in</p> <p>7 downtown Dallas. I read one of the patents again in</p> <p>8 full as well, the 192 patent. And I think that's a</p> <p>9 good summary of what I did to prepare. I tried to get</p> <p>10 a good night's sleep.</p> <p>11 Q Did you look at anything that's not mentioned</p> <p>12 somewhere in your declaration, Exhibit 34?</p> <p>13 A I did. I did.</p> <p>14 Q What did you look at that wasn't mentioned in</p> <p>15 the declaration?</p> <p>16 A I looked at one spreadsheet that listed the</p> <p>17 terms that are at issue in the -- at this stage of the</p> <p>18 litigation, meaning this claim construction stage. I</p> <p>19 understand that there are terms that I did not opine</p> <p>20 on and was not asked to opine on in my report, but are</p> <p>21 nonetheless at issue and are in front of the court and</p> <p>22 I looked through a list of those terms.</p> <p>23 Q When you say a spreadsheet, was this a --</p> <p>24 well, to your knowledge, is that a spreadsheet that</p> <p>25 was -- that formed at least part of a court filing?</p>

<p style="text-align: right;">Page 14</p> <p>1 A I don't know, but to speculate, I would say 2 it looked that way to me. So it may be something 3 that -- and this is pure speculation. It may be 4 something that the parties jointly put together to 5 submit to the court. I don't know one way or another. 6 Q All right. 7 MR. PARKER: So I'm going to ask the 8 court reporter to locate, I think there are probably 9 three different versions. I think we only need to use 10 one of a pleading that's entitled Joint Claim 11 Construction And Plea Hearing Statements. 12 MR. JALALI: We're looking for it, Rik. 13 I see the cover meeting here, is that what you're 14 talking about? 15 MR. PARKER: If you can just tell me 16 which action the header says. 17 MR. JALALI: The first one I came 18 across, Joint Claim Construction And Prehearing 19 Statement. The case number -- the pacer stamp is the 20 519 case. 21 MR. PARKER: Okay. So let's mark that 22 one as Exhibit 38, please. I realize we're going out 23 of order here perhaps. 24 (Exhibits 35-37 marked.) 25 Q (By Mr. Parker) Actually, let me just -- why</p>	<p style="text-align: right;">Page 16</p> <p>1 A Give me one moment to review. Just for the 2 record, there is a blank page between Page 4 and 5 of 3 Exhibit A. It looks like it was a printing error, a 4 pure white page. I'm leaving it in. I'm not taking 5 it out. There's also one between 9 and 10, and 6 between 14 and 15. I'm almost done. 7 I think this is likely the document that 8 I looked at. The document that I looked at had -- was 9 in this format. It had, well, three main columns and 10 I think maybe this document I have in front of me 11 actually has four columns, but the first column is a 12 thin column that has numbers. And the document that I 13 looked at had the disputed claim terms and then also 14 had plaintiff and defendant's proposed construction. 15 So I don't have that document in front of me, but I 16 think it's likely that this is that document or very 17 similar to the document that I looked at. 18 Q Just to close the loop, other than this 19 spreadsheet that you believe is at least very similar 20 to Exhibit A of Exhibit 38, is there anything else 21 that you looked at to prepare for this deposition that 22 isn't listed or discussed in your declaration? 23 A Let me think for a moment. No, not that I 24 recall at this time. 25 Q How was your declaration, Exhibit 38,</p>
<p style="text-align: right;">Page 15</p> <p>1 don't we do this. I believe the court reporter has 2 marked and you had in front of you and put off to the 3 side Exhibits 35, 36 and 37. Could you look at those, 4 Dr. Shoemaker, and just tell me what those are. 5 A Yes. I'm looking now. So I'll go through 6 them one at a time. 7 Exhibit 35 includes -- oh, it looks like 8 multiple copies of the -- it's the 192 patent. There 9 just happened to be multiple copies. So that's 10 Exhibit 35. And then Exhibit 36 is the 864 patent. 11 And Exhibit 37 is the 678 patent. 12 Q Okay. So those are the three patents that 13 are referenced in your declaration, correct? 14 A That's correct. 15 (Exhibit 38 marked.) 16 Q Okay. Now if we can mark as Exhibit 38, the 17 document that your counsel was talking about a minute 18 ago. 19 A Okay. So I have in front of me, Exhibit 38 20 now, which includes two exhibits, Exhibits A and B. 21 Is that what you wanted me to have? 22 Q Yes. So ignoring the single line header that 23 appears on each page, if you could look at Exhibit A 24 to Exhibit 38. And does that look like the 25 spreadsheet that you said you looked at?</p>	<p style="text-align: right;">Page 17</p> <p>1 prepared? 2 MR. JALALI: Objection. Form. Caution 3 the witness not to reveal anything privileged. 4 A So Exhibit -- I think -- so the record is 5 clear, I think you just said Exhibit 38, which is not 6 my declaration. My declaration is Exhibit 34. 7 Q (By Mr. Parker) You're right. I apologize. 8 I meant Exhibit 34. 9 A Okay. Can you repeat your question, please. 10 Q How was Exhibit 34 prepared? 11 MR. JALALI: Objection. Form. I'll 12 caution the witness not to reveal anything privileged. 13 A So what do you mean by how it was prepared? 14 Q (By Mr. Parker) I mean, what was the 15 process? Did you write the entire thing? Were you 16 given something by somebody else? How did the written 17 document -- how was it created? 18 MR. JALALI: Objection. Form. And I'll 19 caution the witness not to reveal anything privileged. 20 A Well, the general process was, counsel made 21 me aware that we're at the stage of the proceedings 22 for the different cases that deals with claim 23 construction, and counsel asked me to review the 24 patents. And there were -- I think I was provided 25 documents similar to what's in Exhibit A of Exhibit 34</p>

<p style="text-align: right;">Page 18</p> <p>1 to this deposition. I think Exhibit A to Exhibit 34 2 of this deposition is -- has in the title PR4-3. My 3 recollection is I may have seen something called 4 PR4-2, which I suspect may be a step in the process 5 where the parties individually identified terms that 6 may need -- that they think the court may need to 7 construe or address. So I performed my own analysis 8 and I had a sequence of conference calls with 9 defendants' counsel to discuss those terms. 10 I was ultimately asked to opine on the 11 terms that -- the specific terms that are mentioned in 12 my declaration in Exhibit 34. 13 So I'll stop there and see if you want 14 to ask me follow-up questions, but that's the general 15 process that I went through. 16 Q Who actually wrote the declaration, 17 Exhibit 34? 18 MR. JALALI: Objection. Form. I'll 19 caution the witness not to reveal anything privileged. 20 A So the -- give me one moment. So, first -- 21 so that the report -- those are my words. Every bit 22 of this report I stand behind. As far as the drafting 23 goes -- as far as the drafting goes -- for example, 24 the -- for example, the legal section, it's -- I 25 typically get that from counsel and review it myself,</p>	<p style="text-align: right;">Page 20</p> <p>1 little. If you look at Exhibit 38 -- Exhibit A to 2 Exhibit 28, that exhibit lists off 11 different terms 3 or phrases. But let me do it this way. 4 If you'd look at Exhibit A to Exhibit 38 5 and identify for me by the number in the left column 6 which terms and phrases you provided opinions about. 7 A I can do that. Give me one moment. So my 8 declaration pertains to Item 4 on Page, or I guess 9 technically it's called Number -- Number 4 on Page 7. 10 I'm continuing through. It pertains to Number 5 that 11 starts on Page 11. It pertains to Number 6 that 12 starts on Page 14. It pertains to Number 7 that 13 starts on Page 18. It pertains to Number 8 which 14 starts on Page 21. And that's it. 15 Q Were you asked for your opinion as to an 16 appropriate instruction for any of the other terms 17 listed in that Exhibit A to Exhibit 38? In other 18 words, terms 1 through 3 or 9 through 11? 19 A Could you repeat your question, please? 20 Q You have identified terms 4 through 8 as ones 21 on which you opine in your declaration, Exhibit 34. 22 I'm asking you whether you ever were asked for an 23 opinion as to any of terms 1 through 3 or 9 through 24 11? 25 MR. JALALI: Objection. Form.</p>
<p style="text-align: right;">Page 19</p> <p>1 and I did that in this case as well. I found the 2 legal section to be consistent with other legal 3 sections that I've had in declarations and reports 4 over the last 12 years, but that section, Legal 5 Standards, was written by counsel. But the rest of 6 it, I either wrote directly myself or was written at 7 either -- directly wrote myself or was -- or was 8 written based on my direction, but, overall, these are 9 my words. 10 There was a final clean-up stage that 11 counsel does that I don't do to make sure, for 12 example, all the headings, for example, on Page 1 and 13 the court case numbers are correct, but that's the 14 general process. So the -- so, hopefully, that 15 addresses your question. 16 Q So in your declaration you discuss, I think, 17 maybe five different claims terms or phrases; is that 18 correct? 19 A So here I'll point you to specific 20 paragraphs. To give you a simple answer, depending on 21 how you count the answer, that might be yes. I put 22 them into two different groups. And if you give me 23 one moment, I can point you to paragraphs where that 24 happens. 25 Q Well, perhaps, let me try to shortcut this a</p>	<p style="text-align: right;">Page 21</p> <p>1 A So I was -- so those other disputed claim 2 terms or phrases. I was not asked to -- I was not 3 asked to opine on them in the declaration that's 4 Exhibit 34. 5 Q (By Mr. Parker) Were you ever given an 6 explanation as to why you were asked as to terms 4 7 through 8, but not terms 1 to 3 and 9 to 11? 8 A Not that I recall. 9 Q Your declaration includes references as 10 Exhibits C through G; is that correct? 11 A Give me one moment to stay organized here. 12 Give me one moment. 13 So I'm taking Exhibit 38 with its two 14 exhibits, A and B, and setting that aside. I'm going 15 back to Exhibit 34, which is my declaration. You have 16 a question about the exhibits to it? 17 Q Yes. Exhibits C through G are examples of 18 extrinsic evidence, correct? 19 A Give me one moment. Yes. C is extrinsic 20 evidence from Microsoft computer dictionary. D is 21 extrinsic evidence from a Chambers Dictionary of 22 Science & Technology. E is extrinsic evidence from a 23 Wiley Electrical & Electronics Engineering Dictionary. 24 F is also extrinsic evidence from Ques Computer User 25 Dictionary. And Exhibit G is extrinsic evidence from</p>

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1 the new IEEE Standard Dictionary of Electrical &
2 Electronics Terms.
3 Q If you look at the Exhibit A to your
4 declaration, Exhibit 34, there are -- there's a
5 category in the middle of the first page of Exhibit A
6 that is entitled, Extrinsic evidence. Do you see
7 that?
8 A I do.
9 Q And the attached exhibits that you just
10 walked through are the first five items listed under
11 that heading, right?
12 A Yes. That's correct.
13 Q But there are seven more items listed under
14 that heading.
15 A That's correct.
16 Q Why are they not attachments to your
17 declaration?
18 A So I'm not sure I understand your question.
19 So I have listed them in my declaration here as
20 materials considered in Exhibit A. They're publicly
21 available information, so they are listed here. So
22 can you help me understand your question?
23 Q How did you decide that the references that
24 you attach as Exhibits A through G should be the ones
25 that are attached and specifically quoted from or

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1 otherwise referenced in the declaration as compared to
2 the rest of the list here that not so discussed or
3 attached?
4 A For different reasons. So, first, I have a
5 collection of dictionaries that have to do with
6 technical terms. And so these are the dictionaries
7 that I had in my personal possession in my personal
8 library. And so some of them do a better or worse job
9 of discussing terms like simulate and emulate. So I
10 don't have all of them in front of me right now, but
11 my recollection is that, for example, some of them may
12 have just discussed simulate or emulate, or they may
13 have had a definition -- or their definition of
14 simulate or emulate was in a different context than --
15 or I felt that their context or field was slightly
16 askew or askew from the -- from the patents in this
17 case.
18 So I felt that the first five of these
19 were a -- were a good set of references to help and
20 assist the court. I also felt like they sufficed,
21 because I didn't feel like -- to give the court a feel
22 for what is in the extrinsic record and technology
23 dictionaries, I didn't feel like I needed to list all
24 12 of them. I felt like five was a good
25 representative set.

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1 Q And I need to close the loop here. Did you
2 consider any other references that are not listed in
3 Exhibit A to your Exhibit 34?
4 A By references, do you mean, for example,
5 other dictionaries, or do you mean just any other
6 documents that I considered?
7 Q Well, I guess I want to cover both. Let's do
8 the broader question and see if there's any. Is there
9 anything you considered in reaching the opinions and
10 preparing the declaration that is Exhibit 34 that is
11 not mentioned beyond the spreadsheet that we've
12 discussed that is not mentioned in Exhibit A to
13 Exhibit 34?
14 A So with respect to references, I think that I
15 did look at other dictionary references, if you will,
16 but I didn't depend on them. For example, I recall on
17 my Mac Book, my Mac Book comes with a dictionary as
18 well. It's not -- it's not a technical dictionary
19 like most of these listed in Exhibit A to Exhibit 34,
20 but I recall looking at definitions of simulate and
21 emulate that -- in those dictionaries as well. But
22 other than that, I don't recall looking at any other
23 documents. I may have also just looked at general,
24 online nontechnical dictionaries, but I didn't depend
25 on them for my declaration.

Page 25

1 Q Okay. So the title of Exhibit A to
2 Exhibit 34 that says, List of materials considered is
3 actually an incorrect title, because you did consider
4 other things that aren't included in that list.
5 MR. JALALI: Objection. Form.
6 Q (By Mr. Parker) Is that correct?
7 MR. JALALI: Objection. Form.
8 A No. I don't agree with that. So I have a
9 lot of knowledge. I've read a lot of things over the
10 years. I haven't listed everything here that I
11 have -- that I've read over the years. You asked me a
12 question about other things that I've read and I told
13 you. There are other things that I've read in
14 addition to that. So what I was trying to list here
15 in materials considered is things that I -- that I
16 looked at in forming my opinions.
17 And so I don't think that there's
18 anything inaccurate about Exhibit A to Exhibit 34. It
19 is a list of materials that I considered.
20 Q But it's an incomplete list, because you did
21 look at certain other things that you just mentioned
22 in a prior answer.
23 MR. JALALI: Objection. Form.
24 Q (By Mr. Parker) Is that correct?
25 MR. JALALI: Objection. Form.

<p style="text-align: right;">Page 26</p> <p>1 A Could you repeat your question, please?</p> <p>2 Q (By Mr. Parker) In an answer that you gave</p> <p>3 just a minute or two ago you talked about certain</p> <p>4 other things that you looked at, a Mac Book. I don't</p> <p>5 want to mischaracterize your words, but certain other</p> <p>6 materials that you looked at, but then for whatever</p> <p>7 reason you decided not to --</p> <p>8 A Consider them. Yes. That's true.</p> <p>9 Q -- use them as a basis for your opinions.</p> <p>10 But you did look at them thinking that maybe you might</p> <p>11 use them; is that fair?</p> <p>12 A No.</p> <p>13 Q Why did you look at them?</p> <p>14 A I looked at them as part of my general</p> <p>15 analysis, but I did -- I found that they were not</p> <p>16 applicable, so I did not consider them in forming the</p> <p>17 opinions that are in my declaration, and so I did not</p> <p>18 list them in the materials considered, because they</p> <p>19 were not applicable. And so I didn't consider them in</p> <p>20 forming the opinions, therefore, I didn't list them in</p> <p>21 the, quote, list of materials considered, end quote.</p> <p>22 By the way, I'm happy to -- I mean, we</p> <p>23 can look at those if you want because there's nothing</p> <p>24 in them that is contradictory to anything in my</p> <p>25 report. And you'll see exactly why I decided not to</p>	<p style="text-align: right;">Page 28</p> <p>1 that was looking at the patents themselves. So I</p> <p>2 examined the patents. I read their specifications. I</p> <p>3 read the claims. I considered the time that the</p> <p>4 patents were filed. And I considered the -- I</p> <p>5 considered other factors the -- well, with respect to</p> <p>6 the time, you can see in Paragraph 24 I -- so I</p> <p>7 considered this timeframe, 2000, 2005. I also</p> <p>8 considered the things such as the state of development</p> <p>9 and what was happening in the industry around 2005 and</p> <p>10 I used that as the -- generally as the basis for</p> <p>11 coming up with my definition of a person of ordinary</p> <p>12 skill in the art.</p> <p>13 Q Would your definition of a POSITA as it</p> <p>14 relates to the patents in suit here be different if</p> <p>15 the relevant date was a year earlier, for example?</p> <p>16 A Give me one moment. I don't think that it</p> <p>17 would.</p> <p>18 Q Would it be different if it was four years</p> <p>19 later than June 10, 2005?</p> <p>20 A I think it's unlikely to change if it was</p> <p>21 four years later also.</p> <p>22 Q Do you consider yourself, today, as a person</p> <p>23 of ordinary skill in the art relevant to these patents</p> <p>24 in suit?</p> <p>25 A In your question you said today, correct?</p>
<p style="text-align: right;">Page 27</p> <p>1 consider them, because they're -- as far as extrinsic</p> <p>2 evidence goes, the dictionaries that I've listed here,</p> <p>3 the extrinsic sources that I've listed here in</p> <p>4 Exhibit A are actually technical dictionaries, maybe</p> <p>5 except for one, which is the second from the end,</p> <p>6 Merriam Webster's Collegiate Dictionary is a</p> <p>7 nontechnical dictionary. But, generally, I found in</p> <p>8 my analysis that what I should be considering, because</p> <p>9 it's more -- because it's more applicable to what's</p> <p>10 being discussed in the patents is these technical</p> <p>11 dictionaries, so that's what I considered.</p> <p>12 Q Would you please look at Paragraph 24 of your</p> <p>13 declaration, Exhibit 34.</p> <p>14 A I have Exhibit 34. What was the paragraph</p> <p>15 number?</p> <p>16 Q 24.</p> <p>17 A I'm at Paragraph 24.</p> <p>18 Q What went into your determination as to what</p> <p>19 a POSITA would be as you described in Paragraph 24?</p> <p>20 MR. JALALI: Objection.</p> <p>21 Q (By Mr. Parker) How did you come to that</p> <p>22 definition of level of skill of a POSITA?</p> <p>23 A So I understand that a patent is to be</p> <p>24 considered from the perspective of a person of</p> <p>25 ordinary skill in the arts. So the primary way I did</p>	<p style="text-align: right;">Page 29</p> <p>1 Q Yes.</p> <p>2 A Yes, I do.</p> <p>3 Q So one of the terms that you opine on in your</p> <p>4 declaration, Exhibit 34, is the word emulate, correct?</p> <p>5 A That's correct.</p> <p>6 Q As of mid 2005, what do you think -- how</p> <p>7 would a person of ordinary skill in the art have</p> <p>8 construed that term as used in the patent? I'm sorry.</p> <p>9 I misspoke. Let me start over again.</p> <p>10 Ignoring the patents, how would a person</p> <p>11 of ordinary skill in the art in 2005 construe -- have</p> <p>12 construed the term emulate?</p> <p>13 MR. JALALI: Objection. Form.</p> <p>14 A So I want to make sure I understand your</p> <p>15 question. First, because you've asked me to put the</p> <p>16 patents aside. At the same time you've asked me</p> <p>17 about -- your question has construe in it, which has</p> <p>18 to do with construction, so there's tension there to</p> <p>19 me. So because you've asked me to put the patents</p> <p>20 aside, yet you've asked me about construction. Can</p> <p>21 you clarify your question?</p> <p>22 Q What do you think was the plain and ordinary</p> <p>23 meaning of the word emulate to a person of ordinary</p> <p>24 skill in the art in 2005?</p> <p>25 MR. JALALI: Objection. Form.</p>

<p style="text-align: right;">Page 30</p> <p>1 A In the context of the patents or putting the</p> <p>2 patents aside?</p> <p>3 Q (By Mr. Parker) Just, in general, a person</p> <p>4 of ordinary skill in this art field as you've defined</p> <p>5 in your declaration, if you walked up to them on the</p> <p>6 street and you said, how do you construe the term</p> <p>7 emulate, what would they say the plain and ordinary</p> <p>8 meaning of that term is?</p> <p>9 MR. JALALI: Objection. Form.</p> <p>10 A So I want to make sure the record is clear.</p> <p>11 So my declaration is about construction for the</p> <p>12 patents. So you're -- and that construction is done</p> <p>13 from the perspective of a person of ordinary skill in</p> <p>14 the art.</p> <p>15 So what I heard in your question -- I</p> <p>16 just want to be clear, is that you want me to put the</p> <p>17 patents aside, and your question appears to have to do</p> <p>18 with a layperson, not a person of ordinary skill in</p> <p>19 the art, a person on the street. Is that what you</p> <p>20 want me to have in mind?</p> <p>21 Q No.</p> <p>22 A Can you clarify your question?</p> <p>23 Q I'm talking about a person of ordinary skill</p> <p>24 in this art, the kind of person that you have defined</p> <p>25 in Paragraph 24, what, to them, is the plain and</p>	<p style="text-align: right;">Page 32</p> <p>1 that the term emulate, as used in the patents in suit,</p> <p>2 is being used consistently with its plain and ordinary</p> <p>3 meaning to a POSITA at the time; is that correct?</p> <p>4 A Again, I want to make sure I understand your</p> <p>5 question. So the construction that Defendants have</p> <p>6 put forth that I've analyzed and I agree with, yes, I</p> <p>7 believe to be a proper understanding in the relevant</p> <p>8 timeframe from the perspective of a person with</p> <p>9 ordinary skill in the art with respect to the field of</p> <p>10 the three asserted patents and in light of claims and</p> <p>11 the specification of those patents.</p> <p>12 Q So the patents don't require construing the</p> <p>13 term emulate in any way that would be inconsistent</p> <p>14 with their plain and ordinary meaning; is that</p> <p>15 correct?</p> <p>16 MR. JALALI: Object to form.</p> <p>17 A I don't understand the patents to require</p> <p>18 construction at all. I understand the process of</p> <p>19 determining whether there's infringement or not is a</p> <p>20 two-step process. And the first step of that process</p> <p>21 is claim construction. I understand that to be what</p> <p>22 we're going through now. I understand that to be a</p> <p>23 court process, a process that the court uses and not a</p> <p>24 requirement of the patents.</p> <p>25 Q (By Mr. Parker) Okay, sir. As you set forth</p>
<p style="text-align: right;">Page 31</p> <p>1 ordinary meaning of the word emulate?</p> <p>2 A Give me one moment. So I would direct you to</p> <p>3 Paragraph 36 of my report. So the plain and ordinary</p> <p>4 meaning in light of the specification of the patents</p> <p>5 at issue in this case would be mimic.</p> <p>6 Q So I'm clear here, you're saying the plain</p> <p>7 and ordinary meaning of emulate in the context of one</p> <p>8 of ordinary skill at the time of these patents is</p> <p>9 mimic. Is that what your testimony is?</p> <p>10 A First question is vague to me because it's</p> <p>11 not clear if you're asking me to put the patent aside</p> <p>12 or not. And so my last answer was with respect to</p> <p>13 what I understand the proper procedure to be when</p> <p>14 going through claim construction, which is to consider</p> <p>15 the claims in light of the specification from the</p> <p>16 perspective of a person of ordinary skill in the art</p> <p>17 and the proper timeframe. And, in that case, you can</p> <p>18 see in Paragraph 36 that I believe that a person of</p> <p>19 ordinary skill in the art would have understood</p> <p>20 emulate to mean mimic. And I go through in Section A</p> <p>21 that starts on Page 18 of my declaration, and I have a</p> <p>22 lot of explanation with respect to that, that depends</p> <p>23 on -- that discusses both the intrinsic record and the</p> <p>24 extrinsic evidence.</p> <p>25 Q So just to be clear here, it is your opinion</p>	<p style="text-align: right;">Page 33</p> <p>1 in your declaration, if the inventor decides to give a</p> <p>2 term a special meaning, he's allowed to do that. And</p> <p>3 what I'm trying to understand is if you are taking the</p> <p>4 position, one way or the other, if the term emulate is</p> <p>5 given a special meaning or not given a special</p> <p>6 meaning?</p> <p>7 A Now I understand what you're asking. So</p> <p>8 you're asking me if I believe the inventor acted as</p> <p>9 his own lexicographer in defining the term emulate.</p> <p>10 Q Well, what I'm asking you is, is the term</p> <p>11 emulate, as used in these patents, being used in any</p> <p>12 manner that is inconsistent with its plain and</p> <p>13 ordinary meaning to a POSITA at the time?</p> <p>14 MR. JALALI: Objection. Form.</p> <p>15 A So I don't think that -- I think that the</p> <p>16 term emulate is not a term that the jury would readily</p> <p>17 understand as a person of ordinary skill in the art</p> <p>18 would understand it. So I don't see -- I see the</p> <p>19 specification providing detail and shedding light on</p> <p>20 what the inventor meant by the word emulate. And I</p> <p>21 think that emulate is not a word that a lay juror</p> <p>22 would readily understand and would at once understand</p> <p>23 in the context of this field. But I don't think that</p> <p>24 there is -- I haven't seen the inventor act as his own</p> <p>25 lexicographer with respect to emulate, and I haven't</p>

<p style="text-align: right;">Page 34</p> <p>1 seen the inventor use this technical and field</p> <p>2 specific term in a way that's -- that's inconsistent</p> <p>3 with how a person of ordinary skill in the art could</p> <p>4 have understood it in this specific field.</p> <p>5 Q (By Mr. Parker) I'm going to ask you the</p> <p>6 same question about simulate. Is the term simulate,</p> <p>7 as used in the patents, used in a manner that is</p> <p>8 consistent with what its plain and ordinary meaning</p> <p>9 would be to a person of ordinary skill in the art at</p> <p>10 the time?</p> <p>11 MR. JALALI: Objection. Form.</p> <p>12 A So the terms emulate and simulate -- and I</p> <p>13 understand your question now has to do with simulate,</p> <p>14 are specific terms that have meaning to individuals,</p> <p>15 persons of ordinary skill in the art in this field,</p> <p>16 that would not be obvious or understood to a lay</p> <p>17 juror. And in analyzing the specification -- or</p> <p>18 specifications, plural, it's the same family, the</p> <p>19 specifications are highly similar. In analyzing the</p> <p>20 specifications I believe that what the inventor meant</p> <p>21 by simulation, I believe the specification sheds a lot</p> <p>22 of light on what was meant by simulation.</p> <p>23 At the same time, I haven't seen the</p> <p>24 inventor acting as his own lexicographer for the word</p> <p>25 simulate, nor have I seen the inventor using the term</p>	<p style="text-align: right;">Page 36</p> <p>1 MR. JALALI: Objection. Form.</p> <p>2 Q (By Mr. Parker) Is that correct?</p> <p>3 MR. JALALI: Objection. Form.</p> <p>4 A I don't -- I don't view it exactly that way.</p> <p>5 I view it as us being in a situation where when I</p> <p>6 first saw these patents and I saw them using the word</p> <p>7 emulate and simulate, I recognized, as a person of</p> <p>8 ordinary skill in the art, that these had meanings</p> <p>9 that a lay juror was not going to immediately</p> <p>10 understand or immediately see. And so I thought that</p> <p>11 it would be helpful for to use more common terms in</p> <p>12 explaining what simulate and emulate mean.</p> <p>13 But to focus on your question, the -- I</p> <p>14 don't see any -- I don't think that the inventor is</p> <p>15 using the word simulate in a way that contradicts what</p> <p>16 a person of ordinary skill in the art, putting aside</p> <p>17 the patents, would understand simulate to mean.</p> <p>18 However, I think a lot of light is shed on what</p> <p>19 simulate and emulate mean by analysis of the</p> <p>20 specification. And I think that without construction</p> <p>21 here by the court, that the jury is going to miss --</p> <p>22 is not -- will have difficulty understanding what</p> <p>23 simulate and emulate mean to a POSITA.</p> <p>24 Q Is mimic a common term in this particular</p> <p>25 field or was it in this particular field at the time</p>
<p style="text-align: right;">Page 35</p> <p>1 simulate in a way that would be inconsistent with what</p> <p>2 a person of ordinary skill in the art would</p> <p>3 understand. But, again, these are highly technical</p> <p>4 terms that may need some interpretation for the jury</p> <p>5 to understand.</p> <p>6 Q (By Mr. Parker) Is it your view that the</p> <p>7 plain and ordinary meaning to the POSITA at the time</p> <p>8 of the term simulate is imitate?</p> <p>9 MR. JALALI: Objection. Form.</p> <p>10 A Could you repeat the question, please?</p> <p>11 Q (By Mr. Parker) Is it your opinion that the</p> <p>12 plain and ordinary meaning of the term simulate to a</p> <p>13 POSITA at the time as used in the patents is imitate?</p> <p>14 A Yes. I believe in this timeframe, around</p> <p>15 2005, that a person of ordinary skill in the art</p> <p>16 reading the claims and reading the specification would</p> <p>17 understand that the term simulate means to imitate.</p> <p>18 I'd also point out that I have a section in my report</p> <p>19 starting on Page 23, Section B, where I go into great</p> <p>20 detail on this and discuss both intrinsic and</p> <p>21 extrinsic evidence with respect to this simulate term.</p> <p>22 Q Just to be clear here, none of that evidence</p> <p>23 that you're now referring to requires any kind of</p> <p>24 departure from what a POSITA would consider the plain</p> <p>25 and ordinary meaning?</p>	<p style="text-align: right;">Page 37</p> <p>1 in 2005?</p> <p>2 MR. JALALI: Objection. Form.</p> <p>3 A So I think mimic is a -- just a -- generally</p> <p>4 a common word that a juror would more readily get</p> <p>5 their hands around than the word emulate. So I think</p> <p>6 that when you ask about, in this field, I think</p> <p>7 generally the word mimic is a term that, around the</p> <p>8 time of 2005, that both a person of ordinary skill in</p> <p>9 the art would understand and I think is more</p> <p>10 digestible to a juror.</p> <p>11 Q (By Mr. Parker) Did the work that you were</p> <p>12 doing back at that time, did you describe that work as</p> <p>13 involving mimicking?</p> <p>14 MR. JALALI: Objection. Form.</p> <p>15 A So I want to make sure I understand the work</p> <p>16 you're talking about. Are you generally asking about,</p> <p>17 for example -- yeah, the question is not clear to me.</p> <p>18 Which work are you referring to?</p> <p>19 Q (By Mr. Parker) In your declaration you talk</p> <p>20 about your work experience on several pages,</p> <p>21 discussing the work you did over time. I'm just</p> <p>22 wondering whether you commonly used the term mimic or</p> <p>23 mimicking when you were doing that work?</p> <p>24 A So I more commonly used terms such as</p> <p>25 simulate, for example. But simulate has a meaning to</p>

<p style="text-align: right;">Page 38</p> <p>1 a POSITA. So recall that when I'm doing work, I'm 2 working with other people of skill in the art, so we 3 frequently use terms that have meaning to us that may 4 not be readily apparent to a lay juror. So I would, 5 for example, use the word simulate, but if I needed to 6 explain that to one of my -- to a lay juror, or, for 7 example, to one of my nontechnical family members, I 8 don't think they would at once understand all of the 9 meaning of the word simulate.</p> <p>10 Q When you were asked to opine on the terms 11 that you've opined on, terms -- items 4 through 8 in 12 the spreadsheet that we looked at earlier, did you 13 come up with those constructions on your own or were 14 they given to you by counsel?</p> <p>15 A So I was asked to review the -- with respect 16 to those terms, I was asked to review the proposed 17 constructions by both parties. So I was -- so I was 18 given -- I forget if the number of the document is 19 PR4-2, but through some means I was informed of what 20 each of the parties had proposed for the 21 constructions.</p> <p>22 And as you're aware, just so the record 23 is clear, so for the terms at issue in my declaration, 24 it's my understanding that Plaintiff did not propose 25 constructions for those terms.</p>	<p style="text-align: right;">Page 40</p> <p>1 Q In the first sentence you say you may rely 2 upon certain things, one of them being and/or 3 additional materials. Do you have -- did you have 4 anything specific in mind when you made that 5 statement?</p> <p>6 A Give me one moment to refresh my memory.</p> <p>7 Q Let me restate it. What additional materials 8 are you referring to in that statement?</p> <p>9 A Okay. That's fine. Let me just read the few 10 paragraphs around here and then I'll answer your 11 question.</p> <p>12 So I think what I'm doing here -- so 13 I -- all of the information that I have depended on -- 14 I've laid out in the declaration. As you can see in 15 this Paragraph 3, I'm discussing additional documents 16 that may come up in the future. Well, at least in 17 part I'm discussing that. I say in the third sentence 18 of Paragraph 3 that if further information becomes 19 available, or if I'm asked to consider additional 20 information, I'd like to be able to opine on that.</p> <p>21 So -- but going back to your question, 22 the first sentence of Paragraph 3, you're asking about 23 the very end of that, Additional materials in forming 24 any necessary opinions. So I think I can make this 25 clear. So all of the materials that I've depended on</p>
<p style="text-align: right;">Page 39</p> <p>1 Q So your opinion was more of a type where you 2 were agreeing with constructions that were given to 3 you than it was coming up with your own construction; 4 is that fair?</p> <p>5 A I disagree with that characterization. So 6 from Plaintiff I did not have a construction to 7 analyze. And from Defendants, I looked at the 8 proposed construction that had -- that had been 9 provided to me, and I determined that it was -- that 10 it was technically correct, and that it would be -- 11 and it was consistent with how a person of ordinary 12 skill in the art would view the term in light of both 13 the claims, and looking at the claims in light of the 14 specification. And I agreed that the constructions 15 were both technically accurate and would be helpful to 16 the jury. And so I adopted those constructions, and I 17 go through in some detail in this report explaining 18 why I believe them to be correct.</p> <p>19 Q Look at Paragraph 3 of your declaration, 20 Exhibit 34, please.</p> <p>21 A I am at Page 3. This is the page that has 22 Paragraph -- the end of Paragraph 4 and the beginning 23 of Paragraph 5.</p> <p>24 Q I want you to look at Paragraph Number 3.</p> <p>25 A I'm sorry. I'm at Paragraph 3 on Page 2.</p>	<p style="text-align: right;">Page 41</p> <p>1 for the opinions in this declaration are included 2 either in the declaration or in the exhibits or 3 referenced in the exhibits. So I have no other 4 additional materials in mind when I'm referring to the 5 necessary opinions here. But if there -- if there is 6 additional information in the future that becomes 7 available, I'd like to be able to consider that, and 8 that may generate new opinions.</p> <p>9 Here it says necessary opinions, that 10 may generate new opinions. But there is no additional 11 information, looking backwards in time, if you will, 12 that I'm thinking of with respect to the opinions that 13 are in this report. Hopefully that answers your 14 question.</p> <p>15 Q If you look at Paragraph 4 of your 16 declaration, Exhibit 34.</p> <p>17 A Okay.</p> <p>18 Q On the top of Page 3, the first sentence that 19 starts on Page 3, you say, I have many years of 20 experience using simulators. What are you referring 21 to when you say simulators?</p> <p>22 A Sure. So, first, this sentence is 23 specifically talking about -- it says, In my academic 24 work, many years of simulators in my academic work. 25 And then if you look at the next sentence, I say as an</p>

<p style="text-align: right;">Page 42</p> <p>1 example when I was working on my master's and Ph.D. I 2 used simulators. I continue to talk about those 3 particular simulators through the rest of the 4 paragraph. 5 And so those simulators, for example, 6 would have been written in MATLAB or C, and they are 7 used to simulate communications systems. So, for 8 example, wired or wireless communication systems, and 9 to model how those systems might work. But they were 10 not -- they were not full implementations. They were 11 not a mimicking, if you will, of a full communication 12 system. They were just modeling certain aspects of 13 communications systems. And I'm happy to answer more 14 questions about that if you'd like. 15 Q Is there a difference between modeling and 16 imitating? 17 A Well, you can -- they are two different words 18 and I actually discuss this. This comes up in some of 19 the extrinsic evidence that I've cited in my report. 20 I think I would say it this way, is one way to imitate 21 something is using a model. That's how I would say 22 it. 23 Q Is another way to imitate to mimic? 24 A No. That's not what I'm saying here in the 25 context of this -- in the context of this report. In</p>	<p style="text-align: right;">Page 44</p> <p>1 can see for example, using Table 1, the level of 2 precision that the inventors meant when they used the 3 word emulate. 4 MR. JALALI: How are you doing? Do you 5 need a break? 6 THE WITNESS: I usually take a break 7 every hour to hour and a half. I don't know how long 8 we've been going, but I would be fine with a break now 9 if it's a good time. 10 MR. JALALI: Rik, are you approaching a 11 break point? Do you want to do it now? 12 MR. PARKER: We can do it now. That's 13 fine. 14 (Recess taken from 10:44 to 11:03.) 15 Q (By Mr. Parker) Dr. Shoemake, in preparing 16 your declaration and coming up with your opinions that 17 are contained therein, did you ever look at any 18 thesauruses? 19 A I'm just checking Exhibit A to my declaration 20 to make sure that none of these also consider 21 themselves a thesaurus. No. I think they all refer 22 to themselves as dictionaries. And so, no, I did not 23 look at any thesauruses, that I recall. 24 Q And to follow up on a question earlier, as 25 you sit here today, are you a person of ordinary skill</p>
<p style="text-align: right;">Page 43</p> <p>1 fact, I would point you back to the sections where I 2 talked about emulation and simulation. And by 3 mimic -- so the proposed construction from Defendants, 4 and I agree with that construction for emulate, is 5 mimic. As I say in the report, that is -- that 6 emulation or mimicking is precise while -- it has 7 precision to it, while simulation is relatively less 8 precise. I think that it might be possible for either 9 of them to use modeling, but I think a key distinction 10 here is that -- and this is supported by the intrinsic 11 and extrinsic record, that emulation has a high degree 12 of precision, while simulating or imitating does not. 13 Q How do you draw the line between when it's 14 precise enough to move into emulation from simulation? 15 A Well, we do that in light of the 16 specifications. So, for example, we can see -- one of 17 the things that can guide us is the specification 18 itself. So if you look at Paragraph 39 of my report, 19 we see the -- we see, for example, a level of 20 precision being taught by the inventors with respect 21 to mobile devices. And we can see that in Table 1, 22 for example. We can see a level of precision that is 23 used here by the inventors when they're talking about 24 emulating an application running on a mobile device. 25 So we can see, for example -- the experts in this case</p>	<p style="text-align: right;">Page 45</p> <p>1 in the art of -- the relevant art field here or a 2 person of extraordinarily skill in the art field? 3 MR. JALALI: Objection. Form. 4 A So as I sit here today, I have the skill of a 5 person of ordinary skill in the art. I also consider 6 myself an expert in the field. 7 Q (By Mr. Parker) You don't view those two 8 standards as different? 9 A So I understand that the standard here, using 10 your word, is that in claim construction the claims 11 are supposed to be viewed in light of the 12 specification from the perspective of a person of 13 ordinary skill in the art, so that's what I've done. 14 In my declaration I've considered -- I perform my 15 analysis from the perspective of a person of ordinary 16 skill in the art and that's why in Paragraph 24 of my 17 report, I went through the exercise of considering 18 what I believe a person of ordinary skill in the art 19 to be. 20 And so my analysis is performed as an 21 expert, but from the perspective of a person with 22 ordinary skill in the art where the -- where that's 23 proper. I understand that to be proper here when 24 considering claim construction. 25 Q Without trying to and hoping not to</p>

<p style="text-align: right;">Page 46</p> <p>1 mischaracterize your testimony, I believe earlier that 2 you made a distinction between emulation and 3 simulation that depended, at least in part, on the 4 degree of precision used; is that fair to say? 5 A I did. But let me go to my report, 6 because -- so, for example, at Paragraph 36 I talk 7 about emulate. And when I talked about precision 8 earlier, you can see -- I'll just read it into the 9 record. I say -- this is at the bottom of 10 Paragraph 36. It says -- I say, A POSITA would 11 understand that in that environment, the target 12 conditions and/or device would be represented with 13 hardware and/or software components that model the 14 target conditions relatively precisely as compared 15 with simulations, which I describe below. And then 16 I -- at the end of the paragraph, I say, I refer to 17 this relatively precise representation as mimicking a 18 target. 19 And so I won't go to the section on 20 simulation right now, but, yes, I did talk about 21 precision earlier before our break. And, as I explain 22 here in the report, a POSITA would view emulation as 23 being more precise or relatively more precise than 24 simulation. And, again, that's supported by the 25 intrinsic and extrinsic records. Well, the intrinsic</p>	<p style="text-align: right;">Page 48</p> <p>1 is one place that the specification shows that 2 emulation has precision. If you didn't have this 3 precision, you wouldn't be able to achieve one of the 4 goals of emulation which is described in the 5 specification as being able to determine using 6 emulation whether or not the application, when 7 actually put onto the target device, for example, a 8 Nokia 3650 mobile device, whether that application 9 would exceed the resource capability of that phone or 10 whether it would be okay. In other words, it would 11 not try to utilize more resources than are available. 12 I think this is kind of an overarching 13 thing through the specification that a POSITA would 14 understand. 15 Q What -- does the patent -- do the patents 16 disclose mimicking all characteristics of a particular 17 mobile device? 18 MR. JALALI: Objection. Form. 19 A So I think that the specification discloses 20 that you can -- with respect to the characteristics, 21 for example, if we stay focused on Table 1, I think 22 there is a specific place in the specification that 23 says that there could be more characteristics or fewer 24 characteristics that are emulated or mimicked. So I 25 think that you can -- that -- so that leads me to</p>
<p style="text-align: right;">Page 47</p> <p>1 and extrinsic evidence. 2 Q Where is there intrinsic evidence that 3 emulation requires a high degree of precision, a 4 relatively high -- a relatively high precision? 5 A Well, let me start off at a high level and 6 see if you want to go deeper. So I think a person of 7 ordinary skill in the art, when looking at the 8 specification, would see that the inventor is 9 describing emulation of applications for mobile 10 devices. And one of the things that is done is the 11 execution of that application in the emulator is 12 profiled, and it's profiled to determine if a resource 13 utilization is exceeded or not. And the patent lists 14 a number of different types of resources, such as 15 processor speed and others that we can go into if you 16 wanted to. 17 But the intrinsic record, the 18 specification, talks about emulation in this context. 19 And, for example, before the break I pointed to 20 Table 1 as an example, where the mobile device that is 21 being emulated in Table 1 is shown as a Nokia 3650 and 22 it's shown precisely with a specific processor, with a 23 precise processor speed and precise storage access 24 speeds and the list goes on. Even precise width in 25 pixels and height in pixels of the display. So this</p>	<p style="text-align: right;">Page 49</p> <p>1 believe that you don't necessarily have to emulate or 2 mimic every single characteristic. 3 But with that said, it's important to 4 realize that a POSITA, viewing the specification, 5 would understand that you need to -- you need to mimic 6 sufficient characteristics precisely to allow the 7 result of your profiling to be accurate, because 8 that's an overall problem, if you will, that the 9 patents -- that inventor says that the patents set out 10 to solve. So if you don't precisely mimic the mobile 11 device characteristics, if you don't mimic them to a 12 degree that allows your profiling results to be 13 precise, then I think that would be inconsistent with 14 how a person of ordinary skill in the art would view 15 the teachings of the specification. 16 But -- so with all that said, I don't 17 think the specification teaches that you have to mimic 18 every single characteristic of the mobile device. 19 Q (By Mr. Parker) And is it your opinion that 20 the application that's being tested does not need to 21 be emulated in the context of the patents, the 22 invention of the patent? 23 MR. JALALI: Objection. Form. 24 A Could you repeat the question, please? 25 Q (By Mr. Parker) Is it your opinion that in</p>

<p style="text-align: right;">Page 50</p> <p>1 the context of the claimed systems of the patents in 2 suit, that the applications being tested do not need 3 to be mimicked?</p> <p>4 MR. JALALI: Object to form.</p> <p>5 A So the use of the word simulate and emulate, 6 and emulate meaning mimic, varies through the claims. 7 So I think that would be -- I think to answer the 8 question we have to be more specific about which claim 9 we're talking about.</p> <p>10 Q (By Mr. Parker) Okay. So let's be more 11 specific. Do you believe that there are claims 12 systems described in these patents where the 13 application being tested needs to be mimicked?</p> <p>14 MR. JALALI: Objection. Form.</p> <p>15 A There are claims that require emulation, 16 which I believe the proper construction of is 17 mimicking. We need to -- let me go to -- however, the 18 target of the simulation or emulation can potentially 19 vary. So give me one moment to pull the patents out.</p> <p>20 Well, again, I think that we could go 21 through -- to answer this, we need to go through claim 22 by claim. I think we have a lot of time today so I'm 23 happy to do that. But, generally speaking, if we go 24 to the specification, the specification is talking 25 about emulating applications on mobile devices. With</p>	<p style="text-align: right;">Page 52</p> <p>1 A I'm just trying to make sure I have my hand 2 around your question. So I think -- I don't have the 3 record in front of me. I think you just asked about 4 the patent instead of a specific claim. So if you're 5 asking about the patent in general, and I want to make 6 sure I understand your question clearly before I 7 answer.</p> <p>8 So you're asking if the patents 9 generally talk about emulating an application?</p> <p>10 Q Yes.</p> <p>11 A So if you look at the 192 patent, if you look 12 at the abstract, if you look at the very first 13 sentence of the abstract, it is, A system and methods, 14 plural, emulate an application executing in real time 15 in a mobile device.</p> <p>16 So the very first sentence of the 17 abstract talks about emulation of an application.</p> <p>18 Q In the context of the patents, emulation can 19 apply to both the applications and the target device, 20 the mobile devices, against which the applications are 21 being tested; is that true?</p> <p>22 A Yes. Generally speaking, I think that's 23 true. I think we can see that, for example, in 24 Figure 1A. You can see Unit 100, and there's emulator 25 101. And inside that emulator, there's a mobile</p>
<p style="text-align: right;">Page 51</p> <p>1 that said, some of the claims shift to -- they talk 2 about simulation. Some of the claims talked about 3 simulation instead of emulation. And some of the 4 claims talk about simulation with respect to -- 5 without having the claims in front of me, they talked 6 about network-related items being simulated. So 7 that's why I said it would be good for us to go to a 8 specific claim if you wanted to.</p> <p>9 That was the end of my answer. Is there 10 another question? Are you still on the line?</p> <p>11 Q Great. I just asked you a big long-winded 12 question and I was on mute. I apologize.</p> <p>13 A I didn't hear it.</p> <p>14 Q Let me try it again. I can't even read it 15 back. Okay. I'm going to step back and make this 16 more general and not focus on claims, and ask whether 17 in your analysis of these patents for consideration of 18 the meaning of the terms emulate and simulate, whether 19 it is your view that the patents discuss situations 20 where applications are emulated during the tests 21 process?</p> <p>22 A Okay. I understand that context.</p> <p>23 Q Well, so are you aware -- do you believe 24 there are situations where the patents discuss 25 applications being emulated?</p>	<p style="text-align: right;">Page 53</p> <p>1 device model 102. And inside the mobile device model, 2 and this is all inside the emulator, there's a 3 frame-based application 104. So I think this means 4 that both the mobile device and applications can be 5 implemented -- I'm sorry, can be emulated generally.</p> <p>6 Q Is it actually true that the described 7 systems of the patents actually run the applications 8 rather than just simulating them or emulating them?</p> <p>9 MR. JALALI: Object to form.</p> <p>10 A Can you repeat the question, please?</p> <p>11 Q (By Mr. Parker) Is it true that the 12 described systems of the patents involve actually 13 running the application being tested rather than 14 simply simulating it or emulating it, that 15 application?</p> <p>16 MR. JALALI: Objection. Form.</p> <p>17 A So the question is vague because you haven't 18 told me which system we're talking about, but I'll try 19 to be responsive nonetheless. In doing so, I'll try 20 to be clear as to how I understand your question. If 21 you're asking, can an application actually be run 22 outside of an emulator, does the specification discuss 23 that, I believe that's true.</p> <p>24 For example, if you look at Figure 1A, 25 there's on the bottom right, mobile device 114. And</p>

<p style="text-align: right;">Page 54</p> <p>1 you can see that inside that, it says -- shows 2 frame-based application 104 as well. And I believe, 3 if we look at the associated text that goes with 4 Figure 1A, we could see it describing that the 5 application, this frame-based application 104, can 6 actually be run on the mobile device 114. 7 Q (By Mr. Parker) Is it not run within the 8 system 100 as well? 9 A Is the application not run within -- 10 Q The system 100. If you're looking at 11 Figure 1A, the upper large dotted box is system 100. 12 The question is, isn't the application run within that 13 system as well? 14 A Well, I think more accurately this is an 15 emulator, so it's being emulated. Is there a certain 16 distinction that you're drawing between emulation and 17 running? 18 Q Well, let me ask you. Do you believe that 19 emulation is different from running of an -- with 20 respect to a given application, is running that 21 application distinct from emulating that application? 22 A Well, I think these are two different topics. 23 And the reason I asked is because, at least my read on 24 your previous question, you seemed to emphasize the 25 word run, and so I wanted to make sure I understand</p>	<p style="text-align: right;">Page 56</p> <p>1 Q (By Mr. Parker) So you don't think that what 2 are mutually exclusive? 3 A I think, for example, that you could run an 4 application in an emulator. You can also run an 5 application on a target device. 6 Q Okay. That was my question. Does the patent 7 disclose running applications as opposed to emulating 8 them? 9 A So, again, you appear to be emphasizing the 10 word run. So to answer your question, I would -- and 11 I'm happy to do this. The patent isn't that long, I 12 think, before the claims, only like 12 or 13 columns, 13 I'd be happy to go through and search for the word run 14 and see exactly what it says about -- the 15 specification says about run, if that's what you're 16 asking me to do. 17 Q Well, it doesn't have to be the word run, it 18 could be playing, for example, playing the 19 application. The point here is that you have proposed 20 that the word emulate means to mimic, which, 21 presumably, does not mean the actual -- mimic implies 22 that something else is being mimicked as opposed to 23 the original thing itself doing it. Is that -- would 24 you agree with that? 25 MR. JALALI: Objection. Form.</p>
<p style="text-align: right;">Page 55</p> <p>1 whether or not you have any specific distinction that 2 you're trying to draw. 3 And so I guess to try to answer your 4 question, I think that it is possible to run an 5 application inside an emulator. I don't know if that 6 helps you or not. It's also possible to run the 7 application on the -- for example, a mobile device, 8 114. 9 Q And so the patents disclose systems where an 10 application that's being tested is actually run as 11 opposed to simply being emulated; is that true? 12 MR. JALALI: Objection. Form. 13 A I disagree with that. You're drawing -- I 14 think you're drawing an improper distinction. If 15 you're suggesting that the patents don't discuss 16 emulating an application, that's just not true. I 17 gave you the abstract and we can start heading through 18 the specification and see other places. I've shown 19 you Figure 1A that shows inside an emulator the 20 application running. So maybe there's some confusion 21 about the question here, some imprecision in the 22 question. But if you're asking me if -- if you're 23 suggesting that the application is run in the emulator 24 and not emulated, I disagree with that. I don't think 25 those are mutually exclusive.</p>	<p style="text-align: right;">Page 57</p> <p>1 Q (By Mr. Parker) Let me make it simpler here. 2 Doesn't -- when you say that something, A, mimics -- 3 you have to have an object of that. It's -- item A 4 mimics item B or process A mimics process B. Is that 5 -- would you agree with that? 6 A That's true for emulation as well, correct? 7 You're emulating something. You're emulating either a 8 mobile device or an application, right? So I don't 9 see -- so the same is true for -- 10 Q So my -- 11 A Go ahead. 12 Q So my question is, does the description of 13 the systems in the patent allow for the notion of 14 running applications rather than running something 15 that mimics the applications or emulates the 16 applications the way you've equated them? 17 A Could you repeat the question, please? 18 Q When the patent -- does the patent describe 19 scenarios where an application is played or run within 20 the context of the inventive system rather than 21 emulating, or as you equate it, mimicking that 22 application? Something else operating the act to 23 emulate or mimic the application? 24 A Yes. So, for example, at Column 5, Row 15, 25 in one part of the specification it says, Application</p>

<p style="text-align: right;">Page 58</p> <p>1 104 is transferred to the emulator 101 for playing 2 within mobile device model 102 to estimate resource 3 usage of application 104 when played on mobile device 4 114. So there's an example that uses the word 5 playing. 6 By the way, I should read the next 7 sentence too. Upon playing application 104 within 8 model 102, emulator 101 utilizes profiler 106 to 9 determine resource utilization of application 104 10 based upon mobile device characteristics 115. 11 So does that answer your question? 12 Q I think you did a moment ago, so thank you. 13 Is there a difference in speed a necessary distinction 14 that would -- let me start over again. 15 In distinguishing simulation -- you 16 believe that emulation and simulation are two 17 different things; is that correct? 18 A They are. And a person of ordinary skill in 19 the art would understand that and that's exactly why I 20 think the court should -- one of the reasons the court 21 should consider construing these terms. 22 Q And does -- is a difference in speed in the 23 context of the inventions described in the patents, 24 something that you believe is a determining factor as 25 to whether something is a simulation or an emulation?</p>	<p style="text-align: right;">Page 60</p> <p>1 precise with respect to the emulation, otherwise, you 2 may not be able to achieve goals that are taught in a 3 specification, such as being able to look at a 4 profiling result to look at the -- for example, a 5 profiling result that tells you how much load there 6 was on the processor to figure out if the application 7 is overloading the processor or not. 8 So in some context speed can be very 9 important to determining whether or not, for example, 10 you are properly emulating something as the 11 specification teaches or not. 12 Q (By Mr. Parker) To be clear here, when 13 you -- the systems described in the patents do not 14 emulate the mobile devices in the mobile device 15 entirety, do they? 16 MR. JALALI: Objection. Form. 17 A Give me one moment to go back to the patent. 18 I'm going to put the 192 -- so, first, I'm not sure 19 what you mean by emulate in its entirety, but a person 20 of ordinary skill in the art would understand, for 21 example, looking at Figure 2. If we shift to 22 Figure 2, for example, we have emulator 101 that has 23 inside it device model 102. And inside the model 24 memory 216 we can again see an application 104. So 25 we're in the context of an emulator and we have</p>
<p style="text-align: right;">Page 59</p> <p>1 A Speed of what? 2 Q Well, you've used it in your declaration in 3 various spots, have you not? You talked about speed. 4 A I have. There are different types of speed. 5 That's why to answer your question, I want to make 6 sure I understand exactly what type of speed you're 7 talking about. 8 Q Let me try this a different way. We talked 9 earlier about relative precision and how, in your 10 view, emulation required the higher relative precision 11 than does simulation. 12 Does emulation require a closer 13 adherence to real-time performance than does 14 simulation -- 15 MR. JALALI: Objection. Form. 16 Q (By Mr. Parker) -- the terms of speed? 17 MR. JALALI: Objection. Form. 18 A So, first, context matters here. We don't 19 have a specific context. So I'm trying to be 20 responsive without a particular context. I can tell 21 you that, depending on context and what type of speed 22 you're talking about, for example, if you're talking 23 about speed of a processor and you're talking about 24 emulation, then the speed, that characteristic of a 25 processor can be very important and needs to be very</p>	<p style="text-align: right;">Page 61</p> <p>1 profilers 106 at the bottom. For example, there's a 2 processor profile module 202 that would be monitoring 3 the execution of application 104 inside the device 4 model operating inside the emulator, and to determine, 5 for example, if the application is overloading the -- 6 would overload the processor on the device. 7 And so now to answer your question, 8 certainly the -- I think a person of ordinary skill in 9 the art would look at the teachings of the 10 specification and believe that the emulation has to be 11 precise enough and model enough characteristics to be 12 able to have an accurate result from the items being 13 profiled. So, therefore, be able to accurately 14 determine if the -- what the resource utilization is 15 for specific resources or characteristics of the 16 mobile device. 17 Q (By Mr. Parker) But what's being emulated is 18 actually network characteristics and not the actual 19 device; is that true? 20 MR. JALALI: Objection. Form. 21 A So, again, context is important. There's no 22 context to your question, whether or not we're talking 23 about a specific claim or just generally. I think 24 you're asking just generally. And, just generally, I 25 disagree. The -- there are separate sections that I'm</p>

<p style="text-align: right;">Page 62</p> <p>1 happy to discuss in the specification that talk about 2 network connectivity and network events. But the 3 initial part of the specification talks about 4 emulation of a -- of a mobile device with -- and where 5 an application is running inside that emulator or 6 model without discussion or requiring a network 7 interface at all. So I disagree with your statement. 8 Q (By Mr. Parker) So I guess I'm going to 9 circle back here, then, because is there anyplace in 10 the patent specification where there is a discussion 11 of emulating more of the additional aspects of the 12 mobile device beyond the network performance 13 characteristics? 14 A I'm trying to decide if we should try to 15 align on your question, or if I should answer because 16 the answer seems to be, yes, there are many places. 17 Look at Figure 2. Figure 2 shows that there are -- 18 there's profiling, for example, of -- with a 19 unit 202, which is a profiler that determines, for 20 example, processor load. We can look at the specific 21 language in the specification related to that. 22 There's also a profiler for memory. There's a 23 profiler for graphics. A profiler for system profile 24 model 208. And so these are all profilers that are 25 monitoring resource usage as the application runs</p>	<p style="text-align: right;">Page 64</p> <p>1 at the top of Page 25, they can be, for example, check 2 a message or send a message. So the specification 3 describes these as events. I think in this part of 4 the specification they discuss three different 5 categories of events, but these are network-related 6 events, but they are -- they certainly don't have 7 precision in modeling the entire network or large -- 8 or even key aspects of the network. 9 What we have here is we have something 10 that's simulating, which is less precise. It does 11 imitate certain aspects related to the network, such 12 as checking messages or sending messages, but this is 13 evidence, for example, of what I'm talking about, that 14 simulation is relatively less precise than emulation 15 and doesn't constitute a full or near-full modeling of 16 a -- of the target. 17 Q In that paragraph you were just reading from, 18 starting four lines down on Page 25, this is in 19 Exhibit 34, you describe the application as running on 20 the emulator. So the application, in the context of 21 this description here, is neither being emulated nor 22 being simulated; is that correct? 23 A Give me one moment. So, first, just for the 24 record, you broke up a little bit, but I think I have 25 some aspects of your question.</p>
<p style="text-align: right;">Page 63</p> <p>1 inside the emulator and none of those have to do with 2 network connectivity at all. 3 Q What basis do you have for asserting that 4 imitation is comparatively relatively imprecise when 5 compared to mimicking? 6 A Sure. I'm happy to help with that. Give me 7 just one moment. I'm headed to my report. This is 8 Exhibit 34. We can go to the section on simulation. 9 I lay out the answer to that question there. 10 So this starts on Page 23, Paragraph 44 11 under the heading Simulate. Give me one moment. So 12 as one example, I would direct you to Paragraph 46 13 where I talk about the intrinsic record and the 14 specification talking about simulation, and talking 15 about pull-down lists that have network 16 characteristics that may be simulated by a simulator. 17 And I won't read the whole Paragraph 46, 18 we can go where you want to go, but you can see in 19 this context in the -- and this is the context of the 20 specification discussing simulation, you can see that 21 rather than emulating an entire network with 22 precision, what's happening is there's a relatively 23 imprecise action going on here, which is simulating, 24 which is described as simulating. And you can see, 25 for example, some of the actions can be -- and this is</p>	<p style="text-align: right;">Page 65</p> <p>1 So what -- so here in this sentence on 2 Page 25 of my declaration that starts with, According 3 to the asserted patents, once the user. So with 4 respect to that, what I'm describing is that, yes, an 5 application can run on an emulator, and the 6 specification describes that certain network events of 7 interest can, likewise, be simulated, such as 8 simulation of sending a message or checking a message. 9 And I think that a person of ordinary skill in the art 10 would understand that -- in reading this 11 specification, would understand that, again, we're in 12 the context of looking at resource load on a mobile 13 device using an emulator. And with respect to network 14 events that could put load on the target device, on 15 the resources in the target device, one of the things 16 that could be done is to have a simulation of network 17 events, such as sending a message or checking a 18 message. And, yes, the specification describes that 19 that can be done in the context of emulation as well. 20 Q Do you have an opinion as to where on the 21 emulation versus simulation, I don't know, maybe 22 spectrum or division, modeling falls? Is modeling 23 more like simulation or emulation? 24 A Yeah. I don't view it that way at all. You 25 can see, for example, in some of the extrinsic record</p>

<p style="text-align: right;">Page 66</p> <p>1 you can see -- you can see the word modeling being 2 used there as well. I'm happy to look at that with 3 you if you'd like to, but I think it would be fair to 4 say that you could potentially call a simulator -- you 5 could say a simulator is modeling something, you could 6 also say an emulator is modeling something. And so I 7 don't think that injection of the word modeling 8 caused -- I don't think that the word modeling 9 necessarily would just go with simulation or 10 emulation. I think that you could use the word 11 modeling potentially with either of them in a true 12 fashion, if you will.</p> <p>13 Q How would modeling differ if it was a 14 simulating model as opposed to an emulating model?</p> <p>15 A I think we can go back to the intrinsic 16 evidence for guidance there, and we can see the 17 specification teaching that simulation, for example, 18 is not a complete modeling. For example, we see that 19 the simulator being discussed around -- in column 12, 20 I think it is, of the 192 patent, that we can see that 21 it is not trying to model the complete network. It's 22 trying to model very limited aspects of the network. 23 So we don't have a precise model of a network, we have 24 very limited aspects of a network.</p> <p>25 And, in fact, the specification says we</p>	<p style="text-align: right;">Page 68</p> <p>1 nature?</p> <p>2 MR. JALALI: Objection. Form.</p> <p>3 A No. I don't view it that way. That's not 4 what I was trying to -- that's not what I was trying 5 to say. I was trying to give the court -- I think in 6 that case, I think I was trying to give the court an 7 example of something that relates to simulation. So, 8 for example, it is -- so, for example, what -- with 9 hurricanes, what you do is, at least with current 10 computing power it seems impossible. I think it is 11 impossible to -- to mimic the -- mimic exactly what a 12 hurricane is going to do using a computer.</p> <p>13 And so, in fact, what happens in 14 hurricane modeling is there's a model. There's a -- 15 and the model is simulated. And, in fact, different 16 meteorologists come up with many different models. 17 And if you go and study -- when there's a hurricane, 18 if you go to NOAA.gov you'll see that the tracks they 19 give to the general public, they actually have 20 underlying many different models that they simulate 21 and try to predict exactly what the hurricanes are 22 going to do.</p> <p>23 So I was trying to use this as an 24 example to help the court understand some of the 25 differences between simulation and emulation. If you</p>
<p style="text-align: right;">Page 67</p> <p>1 just have certain events. So events, not even a full 2 network being modeled. But when we look at the 3 specification with respect to emulation, we see 4 precision. We see to the degree we refer to -- if you 5 turn back to Figure, for example, 11A in the 6 specification, again we -- and I'm happy to look at 7 text in the specification with you as well if you'd 8 like to. We see that -- in fact, let's go back to 9 Figure 2. We see here in the context of an emulator 10 that there has to be -- the degree of modeling has to 11 be complete and precise enough to achieve the 12 objective, if you will. So the objective here, we end 13 up -- in the emulator, we end up with a complete model 14 of the mobile device. It's so complete that you can 15 actually emulate or run or play, whichever verb you 16 want to use, the application inside the model. And 17 it's complete and precise enough to allow you to 18 profile or measure the resource utilization as we can 19 see with the profilers 106.</p> <p>20 Q Once, again, I was on mute. I'm trying to 21 avoid making a lot of noise next to the phone.</p> <p>22 Okay. Paragraph 45 of your declaration 23 you analyze a hurricane. In fact, wouldn't emulating 24 a hurricane require essentially God-like qualities to 25 create giant winds and lots of rain and things of that</p>	<p style="text-align: right;">Page 69</p> <p>1 were going to try to, using a computer, which is the 2 context that we're in here with the patents, if you 3 were going to try to emulate all of the important or 4 key aspects of a hurricane, and I list some of those 5 out in my report that I think we might want to know, 6 like its speed, where it's coming ashore, where 7 spawned tornados are going to be, then that degree of 8 mimicking using a computer is not possible. That's 9 why hurricanes are simulated and not emulated using 10 computers.</p> <p>11 Q (By Mr. Parker) Wouldn't a -- it sounds like 12 you are talking in the context of computer simulation 13 as opposed to just simulation as that term would be, 14 you know, commonly understood.</p> <p>15 Would a simulation of a hurricane be 16 more akin to what somebody might do -- make a movie of 17 where you recreate, as best you can with CGI and 18 whatever else, the look and feel of a hurricane?</p> <p>19 A Give me one moment. So, first, I mentioned a 20 computer at least because I think that's the context 21 that we're in with respect to the claims at issue 22 here. We're talking about the field of using 23 computers to implement emulators and simulate certain, 24 for example, aspects of a network.</p> <p>25 You can see, in fact, just one example</p>

<p style="text-align: right;">Page 70</p> <p>1 of that is in Figure 1B where unit 130, that the</p> <p>2 emulator is running on it is called a computer. But</p> <p>3 with that said, I don't think I got your question.</p> <p>4 Because to answer your question, because I focused on</p> <p>5 your preamble there. So can you repeat the specific</p> <p>6 question? You may be on mute.</p> <p>7 Q No. We're not on mute. I'm just mute at the</p> <p>8 moment.</p> <p>9 A Okay.</p> <p>10 Q I think we can move on. I think the</p> <p>11 deposition is clear on this one.</p> <p>12 Are there real world -- are there</p> <p>13 situations where something can be imitating something</p> <p>14 else but not simulating that something else?</p> <p>15 MR. JALALI: Objection. Form.</p> <p>16 A I haven't had to consider that for this</p> <p>17 declaration. There may or there may not be. What I</p> <p>18 was doing for the declaration was considering and</p> <p>19 analyzing a small number, I think five words and</p> <p>20 phrases that I was asked to opine on. I haven't --</p> <p>21 one of those was simulate, which I agree means</p> <p>22 imitate. And I have a lot of detail in my report</p> <p>23 describing that. I think you're asking me the reverse</p> <p>24 question and I'd have to analyze that further.</p> <p>25 Q (By Mr. Parker) Well, let's think of it in</p>	<p style="text-align: right;">Page 72</p> <p>1 Q (By Mr. Parker) Can you answer the question?</p> <p>2 A I can. I'm happy to. Can you repeat the</p> <p>3 question?</p> <p>4 Q Is the scope of meaning of simulate</p> <p>5 coextensive with the scope of meaning of imitate, just</p> <p>6 generally? In other words, not within the context of</p> <p>7 the patents in suit.</p> <p>8 MR. JALALI: Objection. Form.</p> <p>9 A Putting the patents in suit aside, it may or</p> <p>10 may not be. I haven't analyzed that question.</p> <p>11 Q (By Mr. Parker) So you don't know the answer</p> <p>12 as you sit here right now?</p> <p>13 A If asked to analyze that, I could try to</p> <p>14 analyze it. But putting the patents aside, I would</p> <p>15 need context and I would need time to analyze within</p> <p>16 that context to see if in the specific context they</p> <p>17 were exactly the same or different. But from the --</p> <p>18 but in the context of the patents and from the</p> <p>19 perspective of a person of ordinary skill in the art,</p> <p>20 I think they're coextensive.</p> <p>21 Q Let's talk about emulate. As a general</p> <p>22 matter, is the scope of meaning of the word emulate</p> <p>23 coextensive with the scope of meaning of the word</p> <p>24 mimic?</p> <p>25 MR. JALALI: Object to form.</p>
<p style="text-align: right;">Page 71</p> <p>1 terms of like a Venn diagram. If you had the circle</p> <p>2 of meaning of the term simulate and the circle of</p> <p>3 meaning of the term imitate, are they going to be</p> <p>4 coextensive?</p> <p>5 MR. JALALI: Objection. Form.</p> <p>6 A So in the context of these patents and the</p> <p>7 asserted claims and in light of the specification,</p> <p>8 yes. I think that simulate and emulate are</p> <p>9 coextensive. If you drew the diagram, the -- they</p> <p>10 would overlap. It's important to note that my</p> <p>11 response is with respect to these patents, which I</p> <p>12 think is the proper context for us to be operating in.</p> <p>13 Q (By Mr. Parker) Do you believe they're</p> <p>14 coextensive if you take them generically? In other</p> <p>15 words, not in the specific context of the patent?</p> <p>16 MR. JALALI: Objection. Form.</p> <p>17 A So I think it's irrelevant to the analysis</p> <p>18 here whether outside the context of the claims you can</p> <p>19 find a context in which they're not coextensive. My</p> <p>20 understanding here is that the exercise that the court</p> <p>21 is going through is claim construction that's viewed</p> <p>22 that is construing words and phrases in the claims and</p> <p>23 that's supposed to be done in context of the patents</p> <p>24 themselves and in light of the specification, not</p> <p>25 outside.</p>	<p style="text-align: right;">Page 73</p> <p>1 A Again, I didn't analyze it as a general</p> <p>2 matter. I analyzed in the context of the patents that</p> <p>3 are at issue here and with respect to the asserted</p> <p>4 claims in light of the specification from the</p> <p>5 perspective of a person of ordinary skill in the art.</p> <p>6 So I did not go outside that context to try to decide</p> <p>7 if emulate and mimic are coextensive in some other</p> <p>8 context.</p> <p>9 In this context, I think that -- in this</p> <p>10 context meaning the context of the patents at issue in</p> <p>11 these cases, and the context of the asserted claims, I</p> <p>12 do believe that they're coextensive. I believe that</p> <p>13 mimicking is a good construction and helpful</p> <p>14 construction to the jury to convey what emulate means</p> <p>15 to a person of ordinary skill in this art.</p> <p>16 Q (By Mr. Parker) So as we sit here, you don't</p> <p>17 know the answer to the question that I asked. That's</p> <p>18 correct?</p> <p>19 MR. JALALI: Objection. Form.</p> <p>20 A As I sit here today, I haven't analyzed how</p> <p>21 coextensive emulate and mimic are outside the context</p> <p>22 of the patents and claims at issue in this case. My</p> <p>23 analysis was performed with respect to the patents at</p> <p>24 issue in these cases.</p> <p>25 Q (By Mr. Parker) Do you have any knowledge as</p>

<p style="text-align: right;">Page 74</p> <p>1 to the meaning of the word mimic as a general matter?</p> <p>2 MR. JALALI: Object to form.</p> <p>3 A Give me one moment. Yes, I do.</p> <p>4 Q (By Mr. Parker) What does the word mimic</p> <p>5 mean to you?</p> <p>6 A Right. As a general matter, outside the</p> <p>7 context of the patents, the word mimic has to do with</p> <p>8 trying to be the same as, if you will. So trying to</p> <p>9 be the same as some type of other target or object.</p> <p>10 Trying to be the same as another person. Trying to be</p> <p>11 the same as something else.</p> <p>12 In this context, mimicking means, for</p> <p>13 example, trying to be the same as a mobile device.</p> <p>14 And so, therefore, enabling an emulator that is</p> <p>15 mimicking a mobile device to try to be precise enough</p> <p>16 in its mimicking that you can do things like profiling</p> <p>17 of resource utilization.</p> <p>18 Q What's your understanding of the word</p> <p>19 imitate?</p> <p>20 MR. JALALI: Objection. Form.</p> <p>21 A Again, now, you mean just as a kind of a</p> <p>22 general matter, putting aside the patents, do I have</p> <p>23 an understanding of the word imitate?</p> <p>24 Q (By Mr. Parker) Is imitate used in the</p> <p>25 patent?</p>	<p style="text-align: right;">Page 76</p> <p>1 those same restrictions, so that's why I've used</p> <p>2 simulate to -- well, I've used imitate as the</p> <p>3 construction for simulate. I've analyzed this. It</p> <p>4 actually came from Defendants' counsel, but I think</p> <p>5 this is a good representation, imitate, of what</p> <p>6 simulate means. And I explain this starting in</p> <p>7 Paragraph 44 -- at least in Paragraph 44 and going on</p> <p>8 in my report.</p> <p>9 By the way, I point you to the end of</p> <p>10 Paragraph 44 where I talk about imitating a target as</p> <p>11 well and I say, I refer to this relatively imprecise</p> <p>12 modeling and representation as imitating a target.</p> <p>13 Q Did you conduct any investigation through,</p> <p>14 you know, looking at dictionaries or any other kind of</p> <p>15 research into the meaning of the word imitate while</p> <p>16 preparing your declaration?</p> <p>17 A I did, but I did not depend on it, because I</p> <p>18 think that, unlike the words simulate and emulate, I</p> <p>19 think the words mimic and imitate have a more common</p> <p>20 meaning and understanding to a layperson, to a lay</p> <p>21 juror.</p> <p>22 Q What investigation or research did you do</p> <p>23 into the term imitate?</p> <p>24 A As I mentioned earlier this morning, I looked</p> <p>25 at the dictionary that comes with my Mac Book. This</p>
<p style="text-align: right;">Page 75</p> <p>1 A So you're changing the question. So --</p> <p>2 Q Yeah. I mean, you said in the context of the</p> <p>3 patents and I'm not sure imitate is in the patents.</p> <p>4 Is imitate in the patents?</p> <p>5 A Oh, that's not what I meant to imply. I was</p> <p>6 asking -- I was trying to get clarification on your</p> <p>7 question and I was trying to understand if you're</p> <p>8 asking me the meaning of what I mean by imitate,</p> <p>9 generally to a layperson or what I mean with respect</p> <p>10 to the proposed construction in light of the</p> <p>11 specifications of the patents at issue in this case?</p> <p>12 Q Are you saying that the word imitate is used</p> <p>13 differently by you in construing the patent than it is</p> <p>14 generally?</p> <p>15 A No. That's not what I was saying. I was</p> <p>16 trying to make sure your question was clear.</p> <p>17 Q Okay. My question was very simple. What is</p> <p>18 your understanding of the meaning of the word imitate?</p> <p>19 MR. JALALI: Objection. Form.</p> <p>20 A Give me one moment. So imitate -- imitate</p> <p>21 also has some qualities of being like something else,</p> <p>22 but it's not as strong as mimic.</p> <p>23 Mimic means you're trying to have the</p> <p>24 exact qualities or exactly copy with precision.</p> <p>25 Imitate -- a general meaning of imitate does not have</p>	<p style="text-align: right;">Page 77</p> <p>1 is a software dictionary, and I looked at definitions</p> <p>2 of simulate and imitate there. And they were</p> <p>3 consistent with what I think a lay juror or a</p> <p>4 layperson would view -- I'm sorry. I may have</p> <p>5 misspoken. I looked at imitate and mimic, and they</p> <p>6 were consistent with how I think a lay juror would</p> <p>7 view those terms. I think they have a meaning that's</p> <p>8 more understandable to a lay juror than the terms</p> <p>9 simulate and emulate.</p> <p>10 THE WITNESS: So, Mr. Parker, lunch is</p> <p>11 here. I don't know what your lunch plans are, but is</p> <p>12 this a good time for a break?</p> <p>13 MR. PARKER: Sure. Why don't we do</p> <p>14 that.</p> <p>15 (Recess was taken from 12:23 to 1:30.)</p> <p>16 Q (By Mr. Parker) Why don't we pull out</p> <p>17 Exhibit 37, which is the 678 patent, and Exhibit A to</p> <p>18 Exhibit 38, the spreadsheet that has the proposed</p> <p>19 construction.</p> <p>20 A Okay. Give me one moment to find those.</p> <p>21 Okay. I have Exhibits 37 and 38.</p> <p>22 Q Okay. So I'm going to be talking about the</p> <p>23 claim term that's on Page 7 of Exhibit A of Exhibit</p> <p>24 38, Item Number 4, Claim Term Number 4.</p> <p>25 A Okay.</p>

<p style="text-align: right;">Page 78</p> <p>1 Q I'm pointing you to that so you can have it 2 in front of you. But that appears in -- for example, 3 Claim 1 of the 678 patent, which is Exhibit 37, so I'm 4 going to be asking you to look at Claim 1 of the 678 5 patent. 6 A Okay. So I have -- is there any objection to 7 me throwing away these blank pages? For example, 8 there's a blank page between -- in Exhibit 38 between 9 Page 1 and 2. 10 Q It doesn't bother me. My copy doesn't have 11 those blank pages. 12 A All right. Good. So I've taken the blank 13 page out. So now Exhibit 38 just has Pages 1, 2 -- 14 all the way through 5, plus Exhibits A and B. All 15 right. Where did you want me to go in Exhibit 38? 16 Q Claim Term Number 4. It's on Page 7 of 17 Exhibit A. 18 A Okay. I'm sorry. Got it. I'm getting out 19 Exhibit A. I'm on Page 7. Item Number 4 begins -- 20 this is the one, Simultaneously visually simulate via 21 one or more profile display windows. 22 Q But I'm going to be asking you questions 23 about Claim 1 of the 678 patent. 24 A Okay. So let me get that as well. Try to 25 stay organized here. So now I have Exhibit 37 as well</p>	<p style="text-align: right;">Page 80</p> <p>1 network related events. But, generally, putting 2 the -- generally bandwidth is a characteristic of a 3 network, putting the patent specification aside, if 4 you will. 5 Q But bandwidth is a thing as opposed to an 6 action, right? I mean, how are you using bandwidth in 7 the context of an activity? 8 A Sure. Give me just one moment to answer 9 that. So I've grown accustomed to using the 10 specification that's in the 192, by the way, so I 11 grabbed the 192. If you look in Column 12, starting 12 at Line 3 going through Line 20, there's a paragraph 13 there. And I think this gets to the answer to your 14 question. 15 You can see the inventors discussing 16 window 1200 shows a pull-down list 1202 of network 17 characteristics that may be simulated by simulator 18 810. Then it says, For example, simulator 810 may 19 allow control of scripted events. And so -- and then 20 it gives an example of some of the scripted events. 21 So the inventors for, say, one of the scripted events 22 is bandwidth. 23 So this is an area of the specification 24 this tells us that the inventors view bandwidth as 25 something that can fit within the category of an</p>
<p style="text-align: right;">Page 79</p> <p>1 and I've gone to the claims. I have turned to Claim 1 2 in Column 15 of the 678 patent as well. 3 Q So the construction proposed by the 4 Defendants and agreed to by you is set forth there in 5 the spreadsheet on Page 7. Imitate, while at the same 6 time displaying one or more windows showing in real 7 time resources of the mobile device that are available 8 to the application as a result of the imitated 9 activity. I read that properly, right? 10 A I believe you did. 11 Q Okay. So if we use that claim construction 12 for the phrase in the context of Claim 1 of the 678 13 patent, what is the imitated activity in Claim 1? 14 A Give me one moment. Well, it's a plurality 15 of operator network characteristics, and then that 16 goes on. 17 Q So you're saying that operator network 18 characteristics is an activity? 19 A Yes, I am. That's correct. So that's what's 20 being simulated, a plurality of operator network 21 characteristics. 22 Q Bandwidth is a type of network 23 characteristic, is it not? 24 A The specification describes bandwidth in one 25 place that I'm aware of, and it talks about it under</p>	<p style="text-align: right;">Page 81</p> <p>1 event, specifically here a scripted event. 2 Q So let's turn back to your -- the Defendants 3 proposed construction for the phrase we've been 4 looking at, Item 4 on Page 7 of Exhibit A of 5 Exhibit 38. The proposed definition says, Imitate, 6 then comma, and then ends with the imitated activity, 7 which, in the context of the claim we've been looking 8 at, I believe is a plurality of operator network 9 characteristics. I think you said that. Let me pause 10 there. That's correct, right? 11 A Yes. I think that if you look at -- I'm 12 sorry. Let me switch back to the correct patent now. 13 Give me one moment. I'm accumulating a lot of 14 documents here. 15 So going back to the 678, in the back 16 with the claims in Column 5, yes, we see that Claim 1 17 says Simulate, and then it says, Via one or more 18 profile display windows. But if I skip over that to 19 see what's being simulated, we have simulate a 20 plurality of operator network characteristics. So 21 what you said is correct. 22 Q Okay. So in the proposed construction that 23 the Defendants are setting forth and you've agreed 24 with, what is being displayed is not the simulated or 25 imitated activity; is that correct?</p>

<p style="text-align: right;">Page 82</p> <p>1 A I think what I would say is with respect to 2 the display -- display, we have the claim requiring 3 that you simulate via one or more profile display 4 windows. And I explain in my declaration that, in my 5 opinion, a person of ordinary skill in the art would 6 turn to the specification to understand what this 7 means, what it means to simulate via a window. And 8 then we would -- we find in the specification 9 description of profiles and displays, and actually a 10 number of figures that talk about taking the profile 11 data that tells us about the resources of the mobile 12 device that are available to the application, it talks 13 about displaying those. I think maybe the first time 14 there is a figure that shows that is something like 15 Figure 3, but we can go through figures, if you'd like 16 to. 17 Q Okay. My question is, is what's being 18 displayed something that's different than the 19 plurality of operator network characteristics? 20 A Yes. What's being -- as I explain in my 21 report, this display window, when you look at the 22 specification, is about the -- is about profiling, and 23 it's about resources on a mobile device. So, yes. So 24 what is being displayed has to do with profiling, as I 25 explain in my declaration, and resources -- and</p>	<p style="text-align: right;">Page 84</p> <p>1 So this is not just a display of 2 bandwidth on a screen, for example. This requires 3 that -- this has -- it's important to realize that 4 this via one or more profile display windows has to do 5 with profiling of the resource utilization on the 6 mobile device. In fact, the claim doesn't require 7 displaying bandwidth at all. 8 Q So if you were to look at Figure 12 of any 9 one of the patents -- I mean, I guess let's stick with 10 the 678 patent. 11 A I'm sorry? Which claim number do you want to 12 go to? 13 Q Figure 12. 14 A Oh, Figure 12. Okay. I'm at Figure 12 of 15 the 678 patent. 16 Q Are you there? 17 A I am, yes. 18 Q Okay. Would you agree that the items listed 19 in the bottom window there, 1202, 1204, 1206, that 20 those are various network characteristics? 21 A Give me one moment. Yes, I would. In fact, 22 you can look in the specification at Column 12, 23 Row 26, it says that window 1200 shows a pull-down 24 list 1202 of network characteristics. These are 25 characteristics that, continuing, that may be</p>
<p style="text-align: right;">Page 83</p> <p>1 resource utilization. 2 Q So as you're construing this element, the via 3 one or more profile display windows actually relates 4 to something different than what is being simulated. 5 I want to be sure I'm understanding what you're 6 saying. Is that correct? 7 A Well, I think the answer to that is, yes, but 8 let me just add to it to make sure it's clear. So, 9 yes, in Claim 1 of the 678 what's being simulated is a 10 plurality of operator network characteristics. The 11 claim also requires the simulation to be via one or 12 more profile display windows. And then a person of 13 ordinary skill in the art to determine what that means 14 would turn to the specification and see that the 15 specification discusses -- and I'm being general here, 16 that the specification, with respect to a profile 17 display window, that means a particular thing that the 18 inventor has taught about, that has to do with windows 19 that display resource utilization of mobile devices. 20 And with respect to this specific claim, 21 that would be displaying the resource utilization in 22 windows where what is being simulated is a plurality 23 of operator network characteristics. And, again, the 24 claim goes on, for example, including at last 25 bandwidth.</p>	<p style="text-align: right;">Page 85</p> <p>1 simulated by the simulator 810. 2 Q Please find the 192 patent, which is 3 Exhibit 35. 4 A Okay. 5 Q In particular Claim 1. 6 A I'm going to put the 168 patent away for the 7 time being. Sorry. Give me just one second. Trying 8 to stay organized here. 9 I have Exhibit 35 out, which is the 192 10 patent. I understand you want to go to Claim 1. 11 Q Yes. 12 A Okay. I'm there. I'm in Column 14. 13 Q I'm just going to clarify pretty much the 14 same thing that I did with the last claim. But what 15 is the -- in the claim the word emulate is used 16 instead of simulate, and you have proposed that that 17 means mimic. What is it that's being -- what activity 18 is being mimicked in the context of this claim? 19 A A plurality of network characteristics. 20 Q And how is the -- how would you determine 21 whether the plurality of network characteristics are 22 being simulated or emulated? 23 MR. JALALI: Object to form. 24 Q (By Mr. Parker) In the earlier claim it 25 talks about simulating the network characteristics.</p>

<p style="text-align: right;">Page 86</p> <p>1 In this claim it talks about emulating the network 2 characteristics. How would you determine which of 3 those two things was being done if you were looking at 4 an example of the system?</p> <p>5 MR. JALALI: Objection. Form.</p> <p>6 A Let me just give you a general answer. So I 7 think you're asking about kind of the second step of 8 infringement analysis moving past claim construction. 9 So I would compare the claims as construed by -- and 10 using any terms that the court might construe, and 11 those would be compared to a -- to a product. And so 12 I would analyze that product to determine if it is 13 emulating or mimicking a plurality of network 14 characteristics.</p> <p>15 And I actually wouldn't stop there, just 16 so you know. And I'm sure you're quite aware that the 17 claim continues. But I would look at that product and 18 make a determination as to whether or not it was 19 emulating or mimicking a plurality of network 20 characteristics versus simulating. And that would 21 turn on things such as the level of precision that was 22 being used with the plurality of network 23 characteristics.</p> <p>24 Q (By Mr. Parker) Would the same network 25 characteristic be simulated or emulated? I'm not --</p>	<p style="text-align: right;">Page 88</p> <p>1 Q I think you used simulate twice and I was 2 saying in one instance simulate, in another instance 3 emulate.</p> <p>4 A I'm sorry if I misspoke. I meant to say 5 simulate one time and emulate in the other. If that's 6 your question, I think that can happen. I think it's 7 possible to, for example, emulate the arrival -- it 8 might be possible to emulate some specific network 9 characteristic and also -- and it, likewise, might be 10 possible to simulate the same network characteristic.</p> <p>11 Q And, in your mind in such an example, what is 12 it that distinguishes whether it's being emulated or 13 simulated?</p> <p>14 A So, again, that goes back to what we 15 discussed this morning, the difference between 16 emulation and simulation to a -- what that means to a 17 person of ordinary skill in the art in light of what's 18 being taught in the specification. It would have to 19 do with the level of precision. Emulation is precise 20 and exacting, but a simulation need not be. And that 21 can be seen in the -- that can be seen in the 22 teachings that are in the specification. For example, 23 with respect to the discussion on simulating network 24 characteristics where it's not done by, for example, 25 emulating a full emulation, but rather done by</p>
<p style="text-align: right;">Page 87</p> <p>1 let me try that again.</p> <p>2 Both of these claims talk about the 3 network characteristics. And you've said that the 4 activity that's in one instance imitated and in 5 another instance mimicked. Can the same network 6 characteristic, depending on how it is presented, fit 7 within -- be something that can be simulated in one 8 instance, and in another instance, be something that 9 can be emulated?</p> <p>10 A Give me one moment to think about your 11 question. Okay. If you don't mind, can you just 12 repeat the question one more time, or as close to it 13 as you can?</p> <p>14 Q I am trying to find out whether you believe 15 that the same network characteristic could be used in 16 the context of both Claim 1 of the 678 patent and the 17 Claim 1 of the 192 patent. Let me just leave it at 18 that.</p> <p>19 A I think -- let me just tell you how I 20 understand your question, and then I'll answer it. So 21 I think you're simply asking, could -- if given a 22 network characteristic, might it be possible to 23 emulate that network characteristic, and might it be 24 possible to simulate the same network characteristic. 25 That's your question, correct?</p>	<p style="text-align: right;">Page 89</p> <p>1 simulating just specific events.</p> <p>2 Q So we'll stick with Claim 1 of the 192 3 patent. Does simultaneously visually emulating, as 4 used in that claim, require that more be emulated than 5 just the plurality of network characteristics? Let me 6 try again. Hold on.</p> <p>7 We have in Claim 1 of the 678 patent, 8 Exhibit 37, we talk about simultaneously visually 9 simulating, but in the third patent that we haven't 10 been talking about recently, but I'd like for you to 11 get now, Exhibit 36, you have a similar phrase in 12 Claim 1, except it does not say simultaneously 13 visually.</p> <p>14 A Yes. I talked about this in my report 15 somewhere around Paragraph 56, I think.</p> <p>16 Q What does simultaneously visually add to the 17 rest of the term? If you have the two terms side by 18 side, they're the same except for one of them has 19 simultaneously visually?</p> <p>20 A Right. I've analyzed this. I can address 21 this for you. Were you finished with your question?</p> <p>22 Q Yes.</p> <p>23 A Give me one moment. So if look in Paragraph 24 56, kind of start in the middle, I have a sentence 25 that starts with, First and then a subsequent sentence</p>

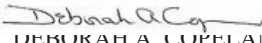
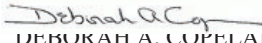
<p style="text-align: right;">Page 90</p> <p>1 that starts with second. And so this is referring to 2 embodiments in the specification. And so to 3 understand this phrasing, like simultaneously 4 visually, I turned to the specification, and I see the 5 specification teaching different embodiments. So let 6 me read from Paragraph 56. I say, First, the asserted 7 patents state that profile data 152 may be displayed 8 in real time as application 104 is played within model 9 2. And then also the specification teaches that 10 something else could happen. Reading from Paragraph 11 56 again. I say, Second, the asserted patents state 12 that, alternatively, profile data 152 may be output as 13 report. 14 And so I think this is where the 15 specification gives us guidance on what simultaneously 16 visually means. I think that a person of ordinary 17 skill in the art would understand this term 18 simultaneously visually to correspond to that first 19 embodiment, where there is a real time requirement to 20 display the data as the emulation occurs. 21 And, likewise, you can see in claims 22 that do not have this simultaneous visually, I think 23 that Defendants have not included -- well, the 24 proposed construction from Defendants that I agree 25 with, does not include that requirement for a</p>	<p style="text-align: right;">Page 92</p> <p>1 characteristics in the context of simulation there. 2 Likewise, with respect to emulation, the 3 patents also talk about emulation, and it's in a more 4 broad way, it's not just one paragraph. They talk 5 about emulation in many locations. And so the patents 6 talk about both emulation and simulation, and they 7 also do talk about the network characteristics and 8 simulating them. 9 Q Okay. I think you -- I probably phrased it 10 poorly, because I think you missed the import of my 11 question. 12 The question is, does the patents 13 describe -- you used the word emulate and simulate, 14 but does it provide any further explanation of what 15 that means when you're talking about a particular 16 network characteristic? 17 MR. JALALI: Objection. Form. 18 A So let me try to -- I didn't mean to miss 19 your previous question, so let me try to make sure I 20 understand this question before I dive in again. 21 So are you focusing on does -- does the 22 patent specification describe how to emulate or mimic 23 a network characteristic? Is that the crux of your 24 question? 25 Q (By Mr. Parker) Well, it may be an aspect of</p>
<p style="text-align: right;">Page 91</p> <p>1 real-time display. 2 Simultaneous means displaying the window 3 and the information that's required to be in the 4 window at the same time the simulation or emulation is 5 running. 6 MR. PARKER: I would like to take a 7 10-minute break with the expectation that I am close 8 to finishing. I just want to make sure I'm not 9 missing anything. 10 MR. JALALI: Okay. 11 (Recess taken from 2:03 to 2:09.) 12 Q (By Mr. Parker) So we've spent some time 13 talking about network characteristics as they are used 14 in -- that phrase is used in the patent and in the 15 claims, in particular. 16 Do any of the patents describe how 17 network characteristics are mimicked? 18 MR. JALALI: Objection. Form. 19 A So let me answer it this way. So, first, 20 with respect to network characteristics, the patents 21 do talk about network characteristics. One place that 22 they talk about that is in Column 12 of the 192 23 patent. And we can see the first full paragraph 24 there, Rows 3 through 20, talk about network 25 characteristics. They talk about network</p>	<p style="text-align: right;">Page 93</p> <p>1 it. I'm getting an echo on the phone. Are you guys 2 not having an echo on your end? 3 A We don't hear an echo, but you're breaking up 4 just a little bit, so something is happening on the 5 network. 6 MR. PARKER: Going to hang up and call 7 back in. 8 THE WITNESS: Okay. 9 MR. PARKER: I'm back and it's just as 10 bad. 11 MR. JALALI: Rik, you're pretty close to 12 done, sounds like. 13 MR. PARKER: Yeah. I think so. 14 MR. JALALI: Want to try calling my 15 phone and I'll put it on speaker here and see if 16 that's easier? 17 MR. PARKER: Let me call from my cell 18 phone rather than the conference room phone. 19 MR. JALALI: Okay. 20 Q (By Mr. Parker) So the question is, the 21 patents describe simulating network characteristics or 22 emulating network characteristics, but do they give 23 any more detailed description about what that means 24 with respect to any given network characteristic? 25 A Okay. So there are details in the</p>

<p style="text-align: right;">Page 94</p> <p>1 specification. So, for example, going back to 2 Column 12 where the first complete paragraph where the 3 inventor talks about simulating network 4 characteristics, there are details such as, they're 5 referring to simulator 810. And we can see that 6 simulator 810, I believe in -- for example, we can see 7 that in Figure 8. So, in general, there are more 8 details, but I think the very last part of your 9 question, you're really asking about details of the 10 network characteristics themselves and there is in 11 this Paragraph 12, I guess trying to be responsive to 12 your question, there are these scripted events that 13 are talked about or they're events. It says, The 14 simulator may allow control of scripted events, 15 consumer events, incoming events. And then it gives 16 different types of events. This is under the context 17 of the paragraph of network characteristics. And so 18 there's some additional detail provided by the 19 specification.</p> <p>20 Q But it's not detail that would allow a POSITA 21 to determine whether or not the network characteristic 22 is being simulated or emulated, is it?</p> <p>23 MR. JALALI: Objection. Form.</p> <p>24 A Oh, yes. Well, first, there are two parts to 25 answering that question. First, a person of ordinary</p>	<p style="text-align: right;">Page 96</p> <p>1 paragraph it talks about -- for example, with respect 2 to simulation that you may just -- this is my word, 3 you may trigger a network event. You may trigger 4 a -- for example, an event such as receiving a 5 message. There may also be some in -- I think there's 6 another place in the specification as well. Maybe 7 Column 11. Give me one moment. Almost done. Give me 8 one second. Just finding it in Column 1. Here we go.</p> <p>9 So Column 1, Row 23, again is talking 10 about network simulation. It says, For example, if a 11 message is received and/or retrieved by a model 102 12 while playing application 104, certain resources are 13 required to handle the received message and, 14 therefore, available resources for the application is 15 reduced accordingly. If you look above where I just 16 read, there's also some discussion about network 17 simulation using events.</p> <p>18 But I think a person of ordinary skill 19 in the art would look at this and understand this is 20 not a fully -- this is not a full emulation, this is a 21 simulation where, for example, you trigger a -- for 22 example, a message to be received. And then the 23 emulator, the model that's running the application, 24 can then determine how the resource utilization is 25 impacted.</p>
<p style="text-align: right;">Page 95</p> <p>1 skill in the art or an expert in the case should be 2 able to determine if a network characteristic is being 3 emulated or simulated by a particular product. But, 4 further, this Paragraph 12 gives us some guidance into 5 exactly that, in that it's talking about simulation 6 rather than emulation of network characteristics. And 7 it talks about using scripted events and using events 8 for that simulation. So there's some guidance right 9 there as to an aspect of a potential simulation of a 10 network characteristic.</p> <p>11 Q (By Mr. Parker) We're still, I think, 12 talking past each other here, because the -- what I'm 13 trying to find out is whether a person of ordinary 14 skill would take away from the patent that, okay, 15 we're talking about network characteristics. When I'm 16 simulating, I'm going to be doing something -- some 17 level of precision or some other aspect of the 18 characteristics that puts it into the category of 19 simulation or, conversely, puts it into the category 20 of emulation.</p> <p>21 Is there any detail about any of the 22 network characteristics that would aid in that 23 determination?</p> <p>24 A Yes. There is, and that's just what I was 25 going through. For example, in Column 12 in this</p>	<p style="text-align: right;">Page 97</p> <p>1 So I do think that there are a number of 2 things in the specification where the inventors are 3 teaching us not only about the differences between 4 emulation and simulation, but giving us examples of 5 how you might go about simulating certain network 6 characteristics.</p> <p>7 Q Is there a description as to how any 8 particular network characteristic is mimicked?</p> <p>9 MR. JALALI: Object to form.</p> <p>10 A There are descriptions of emulation and 11 simulation. There are also discussions, as I've just 12 gone through several times now, that describe how 13 network characteristics can be simulated. There are 14 descriptions of how those network characteristics can 15 be simulated in the context of emulating using a 16 device model, for example, in Figure 8.</p> <p>17 If you're asking if the -- if there is 18 an equivalent paragraph to Paragraph 12 that says how 19 to mimic a network characteristic, I don't think that 20 exists in the specification, but there's plenty of 21 discussion of emulation in the specification itself.</p> <p>22 Q (By Mr. Parker) But the notion of saying 23 emulate and simulate is the description or conclusion 24 about what is happening without a description of what 25 is going on to meet that conclusion. What is</p>

<p style="text-align: right;">Page 98</p> <p>1 happening with the network characteristics that</p> <p>2 demonstrates that it is simulating or emulating? Is</p> <p>3 there any description along those lines?</p> <p>4 MR. JALALI: Object to form.</p> <p>5 A So you're very garbled, by the way. It's</p> <p>6 very difficult to understand what you're saying. Can</p> <p>7 you just give me the main part of the question so I</p> <p>8 can try to hear it clearly?</p> <p>9 Q (By Mr. Parker) Hold on. Let me see if this</p> <p>10 works any better.</p> <p>11 A Yes. That was an improvement on our end.</p> <p>12 Q Not an improvement on my end. My question</p> <p>13 concerns whether there is any description in the</p> <p>14 specification that informs the reader about how a</p> <p>15 particular network characteristic is presented so that</p> <p>16 it either simulates or emulates the network</p> <p>17 characteristic?</p> <p>18 MR. JALALI: Objection. Form.</p> <p>19 A And your question has to do with how it's</p> <p>20 presented?</p> <p>21 Q (By Mr. Parker) You have been talking</p> <p>22 about, in conclusory terms, it says, This</p> <p>23 characteristic is simulated. But I'm asking, what --</p> <p>24 what other description, if any, is there that</p> <p>25 evidences that it is being simulated or emulated?</p>	<p style="text-align: right;">Page 100</p> <p>1 you. I can go through more, if you want me to go</p> <p>2 through more.</p> <p>3 There's, for example, Figure 8. There's</p> <p>4 a discussion of a network simulator 804. There's an</p> <p>5 operator development server 808 that has a simulator</p> <p>6 in it that has an event generator. 814, which</p> <p>7 corresponds, I think, to this Column 11 and 12 that we</p> <p>8 were looking at. In fact, you can see in Column 11</p> <p>9 that simulator 810 using data provider 812 and event</p> <p>10 generator 814 does -- interacts with network simulator</p> <p>11 804.</p> <p>12 So there's a lot of discussion here</p> <p>13 about network characteristics and their simulations</p> <p>14 and how they -- yeah. And so there are many things</p> <p>15 that are being discussed here with respect to network</p> <p>16 characteristics and their simulation and how that fits</p> <p>17 with the emulation. For example, emulator 101 in</p> <p>18 Figure 8.</p> <p>19 Q But none of those provide the detail that</p> <p>20 would allow a person or person of ordinary skill to</p> <p>21 determine on their own whether the network</p> <p>22 characteristic is only being simulated or is actually</p> <p>23 being emulated; is that true?</p> <p>24 A It sounds like you're asking me to undertake</p> <p>25 like a Section 112 analysis. I haven't been asked to</p>
<p style="text-align: right;">Page 99</p> <p>1 MR. JALALI: Objection. Form.</p> <p>2 A That what? You have the pronoun it in your</p> <p>3 question. Are you talking about a generic network</p> <p>4 characteristic?</p> <p>5 Q (By Mr. Parker) Yes. Any network</p> <p>6 characteristics. I don't care.</p> <p>7 A Maybe we should focus on the question. The</p> <p>8 question is vague. Three or four times now I have</p> <p>9 explained where the specification talks about</p> <p>10 simulation of network events and where it talks about</p> <p>11 emulation and where it talks about emulation and</p> <p>12 simulation of network events together, or I should</p> <p>13 say, network characteristics and how the network</p> <p>14 characteristics may be implemented using events. So</p> <p>15 it's just not clear to me how my answers are --</p> <p>16 Q Is there any description as to how those</p> <p>17 things are accomplished?</p> <p>18 MR. JALALI: Objection. Form.</p> <p>19 A Those things? These questions are --</p> <p>20 Q (By Mr. Parker) The network -- the</p> <p>21 simulation of network characteristics or the emulation</p> <p>22 of network characteristics?</p> <p>23 A Yes, there is.</p> <p>24 Q What is that?</p> <p>25 A Well, I've gone through that many times for</p>	<p style="text-align: right;">Page 101</p> <p>1 do that at this stage. So are you asking about lack</p> <p>2 of written description in support of simulation and</p> <p>3 emulation?</p> <p>4 Q No. You have pointed to a number of</p> <p>5 different places where the terms simulate or simulator</p> <p>6 for emulate, emulator, emulation appear. But I'm</p> <p>7 asking you, is there any additional detail that would</p> <p>8 support looking at a network characteristic as set up</p> <p>9 in one of these systems and saying, Oh, yeah, that</p> <p>10 network characteristic is being simulated or it's</p> <p>11 being emulated?</p> <p>12 A And I think multiple times now I've said,</p> <p>13 yes, there are details in the specification that would</p> <p>14 help a person of ordinary skill in the art and also an</p> <p>15 expert in analyzing product to determine whether, for</p> <p>16 example, a network characteristic is being simulated</p> <p>17 or emulated. I've talked about Column 12 where it</p> <p>18 talks about simulation of network characteristics</p> <p>19 using events. I've talked about --</p> <p>20 Q What is there in Paragraph 12 that points to</p> <p>21 a network characteristic and shows that it is not</p> <p>22 being emulated?</p> <p>23 A So Paragraph 12 talks about how to simulate</p> <p>24 network -- I'm sorry. It's Column 12, it's not</p> <p>25 paragraph. So it's Column 12, the paragraph we're</p>

<p style="text-align: right;">Page 102</p> <p>1 talking about is Rows 3 through 20. And so this</p> <p>2 column talks about -- it talks about simulation of</p> <p>3 network characteristics using pull-down menus and</p> <p>4 using different types of events.</p> <p>5 Q Let's pick one of those things. Let's say</p> <p>6 checking E-mail. That's an example, right?</p> <p>7 A Yes. That's correct.</p> <p>8 Q Could you emulate the event of checking</p> <p>9 E-mail?</p> <p>10 A Yes. I think you could.</p> <p>11 Q Within the context of the patent? So what</p> <p>12 would -- what detail would you need to know to</p> <p>13 determine whether checking E-mail is being emulated or</p> <p>14 merely simulated?</p> <p>15 A Yes. I think that -- for example, what's</p> <p>16 being taught in Figures 8 through 13 and the</p> <p>17 associated text can guide us on that. I think that,</p> <p>18 for example, with respect to E-mail, one might look</p> <p>19 and follow the guidance of Column 12 for simulation.</p> <p>20 There might just be something that triggers the</p> <p>21 application to think that there's an event -- triggers</p> <p>22 the application to process an incoming E-mail event.</p> <p>23 With an emulation, one might expect a -- expect</p> <p>24 something more full-blown, a mimicking of something</p> <p>25 that actually generates an E-mail, not merely</p>	<p style="text-align: right;">Page 104</p> <p>1 see that the -- we see the specification teaching us</p> <p>2 -- no matter what you're simulating, we see that it's</p> <p>3 not a full-blown version of what is being simulated.</p> <p>4 We see things used like triggering events instead of</p> <p>5 generating full-blown E-mail servers or network</p> <p>6 browsers or implementing complete network models.</p> <p>7 And so I think that a person --</p> <p>8 Q Does precise or precision appear anywhere in</p> <p>9 the specification?</p> <p>10 A Sorry. I wasn't finished with my answer.</p> <p>11 I think that a person with ordinary</p> <p>12 skill in the art would see that -- throughout these</p> <p>13 specifications, they see the difference between an</p> <p>14 emulator and simulator. By the way, that's seen in</p> <p>15 the specification, but I even saw it immediately just</p> <p>16 with my knowledge as a person of ordinary skill in the</p> <p>17 art before I read the specification I knew of this</p> <p>18 difference between emulator and simulator and that's</p> <p>19 reflected in the extrinsic information as well.</p> <p>20 So your next question was?</p> <p>21 Q Do any of the words precise, precision --</p> <p>22 leave it with those two. Do they appear anywhere in</p> <p>23 this specification?</p> <p>24 A You know, I haven't searched for them, but I</p> <p>25 don't think that they do. Those are words that I've</p>
<p style="text-align: right;">Page 103</p> <p>1 something that generates an event or simulates</p> <p>2 something happening, but something that emulates a</p> <p>3 real E-mail occurring.</p> <p>4 And so that gets back to what we</p> <p>5 discussed earlier about the difference between</p> <p>6 emulation and simulation. So a person of ordinary</p> <p>7 skill in the art would expect there to be precision,</p> <p>8 and more precision in that emulation of an E-mail and</p> <p>9 more of a having full-blown characteristics of</p> <p>10 receiving an E-mail message.</p> <p>11 Q But none of that is described in the patent</p> <p>12 specification, is it, the way that you distinguish</p> <p>13 simulation from emulation in terms of precision and</p> <p>14 the like, that is not discussed in the patent, is it?</p> <p>15 A I disagree.</p> <p>16 Q Where is it discussed?</p> <p>17 A Well, throughout the specification. The</p> <p>18 specification talks about emulation throughout. We</p> <p>19 talked about this earlier today. We started out with</p> <p>20 Table Number 1 and talking about how emulation of</p> <p>21 something, whether it's a mobile device or a network</p> <p>22 message would be very -- it would be very precise to</p> <p>23 allow you to -- for example, in the case of emulation,</p> <p>24 to profile properly.</p> <p>25 And then in the case of simulation, we</p>	<p style="text-align: right;">Page 105</p> <p>1 used to try to communicate what these terms mean and</p> <p>2 try to help the court understand what the difference</p> <p>3 is between emulation and simulation.</p> <p>4 Q Okay. That's precisely my point. Okay.</p> <p>5 MR. PARKER: I don't have any further</p> <p>6 questions.</p> <p>7 EXAMINATION</p> <p>8 BY MR. JALALI:</p> <p>9 Q Neema Jalali for defendants.</p> <p>10 Dr. Shoemaker, can I have you turn to the</p> <p>11 192 patent.</p> <p>12 A Yes. Give me just a moment. I was just</p> <p>13 putting that patent back in proper order. Give me one</p> <p>14 moment.</p> <p>15 Q For the record, this is Exhibit Number --</p> <p>16 A 35. Actually, I think I've achieved the</p> <p>17 proper ordering. I have the 192 patent in front of</p> <p>18 me, which is Exhibit 35.</p> <p>19 Q Do you recall earlier today answering</p> <p>20 questions regarding the first sentence in the</p> <p>21 abstract?</p> <p>22 A I do. That sentence says, A system and</p> <p>23 methods emulate an application executing in real time</p> <p>24 in a mobile device. Yes, I recall that.</p> <p>25 Q Do you remember questions relating to the</p>

<p style="text-align: right;">Page 106</p> <p>1 emulation of the application in the context of the</p> <p>2 sentence?</p> <p>3 A I do.</p> <p>4 Q Can you describe what that means?</p> <p>5 A I can. I think I would, again, probably use</p> <p>6 Figure 1A to do that. And so you can see in Figure 1A</p> <p>7 there is an emulator 101, it's emulating a mobile</p> <p>8 device mode 102. There is an application called a</p> <p>9 frame-based application 104. And, by the way, on the</p> <p>10 bottom right-hand side you can see there's a mobile</p> <p>11 device 114. It's actually in dashed lines, but you</p> <p>12 can see it also -- dashed lines has frame-based</p> <p>13 application 104.</p> <p>14 And so -- then going back to the</p> <p>15 abstract, you were asking about emulate an</p> <p>16 application. So, for example, with respect to this</p> <p>17 Figure 1A, you can see that there's an application</p> <p>18 104, and it can be run either inside the mobile device</p> <p>19 114 or inside the emulator 101. By the way, that is</p> <p>20 the exact application that's run in both models, so</p> <p>21 it's not -- the application itself isn't a mimicked</p> <p>22 version of the application. In fact, this</p> <p>23 specification teaches that you can run the same</p> <p>24 application in either the emulator or in the mobile</p> <p>25 device in the target platform, if you will, on the</p>	<p style="text-align: right;">Page 108</p> <p>1 suit directed to running the application in an</p> <p>2 emulated version of the mobile device or running the</p> <p>3 application in a real-world version of the mobile</p> <p>4 device?</p> <p>5 A If I understand your question correctly, they</p> <p>6 are -- the patents are focused on running the actual</p> <p>7 application inside an emulator, not on the real-world</p> <p>8 mobile device. In fact, they teach that there are</p> <p>9 problems with having to run the actual application in</p> <p>10 development on the real-world mobile device, so they</p> <p>11 would teach away from that. They actually teach</p> <p>12 toward running the actual application inside the</p> <p>13 emulator and inside a mobile device model such as</p> <p>14 emulator 101 and mobile device model 102.</p> <p>15 MR. JALALI: I have nothing further.</p> <p>16 Rik, do you?</p> <p>17 MR. PARKER: No. Nothing further from</p> <p>18 me. Thank you, Dr. Shoemake.</p> <p>19 THE WITNESS: Nice to meet you.</p> <p>20 (Deposition concluded.)</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 107</p> <p>1 mobile device -- device itself.</p> <p>2 Sometimes persons of ordinary skill in</p> <p>3 the art might say, as appears to be happening here in</p> <p>4 the abstract, emulate an application, but that is not</p> <p>5 a mimicked application, it's the same application that</p> <p>6 could be run inside an emulator or could be run on the</p> <p>7 target mobile device.</p> <p>8 Q Thank you. So just to clarify, when the</p> <p>9 sentence here in the abstract that you also testified</p> <p>10 about just now and earlier today, A system and methods</p> <p>11 emulate an application executing in real time in a</p> <p>12 mobile device, the application referenced here, is it</p> <p>13 the actual application that the patent envisions being</p> <p>14 developed or is it an emulated version of the</p> <p>15 application?</p> <p>16 A It is the prior. It's the actual application</p> <p>17 that you're trying to develop and you can run that on</p> <p>18 the mobile device, or you can run it inside the</p> <p>19 emulator. This patent doesn't teach nor would a</p> <p>20 person of ordinary skill in the art ever think that</p> <p>21 the application itself is actually emulated or a</p> <p>22 mimicked version of the application. It's actually</p> <p>23 the real application that you're trying to develop to</p> <p>24 run -- ultimately run on the mobile division.</p> <p>25 Q And are the claims of the three patents in</p>	<p style="text-align: right;">Page 109</p> <p>1 CHANGES AND SIGNATURE</p> <p>2 WITNESS NAME: MATTHEW SHOEMAKE</p> <p>3 DATE OF DEPOSITION: FEBRUARY 27, 2020</p> <p>4</p> <p>4 PAGE LINE CHANGE REASON</p> <p>5 _____</p> <p>6 _____</p> <p>7 _____</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>

<p style="text-align: right;">Page 110</p> <p>1 I, MATTHEW SHOEMAKE, have read the foregoing 2 deposition and hereby affix my signature that same is 3 true and correct, except as noted above.</p> <p>4 _____ 5 MATTHEW SHOEMAKE 6 STATE OF TEXAS)</p> <p>7 Before me, _____ on this day 8 personally appeared, MATTHEW SHOEMAKE, known to me (or 9 proved to me under oath or through _____) to 10 be the person whose name is subscribed to the 11 foregoing instrument and acknowledged to me that they 12 executed the same for the purposes and consideration 13 therein expressed.</p> <p>14 Given under my hand and seal of office this 15 _____ day of _____, 2020.</p> <p>16 _____ 17 Notary Public in and 18 For the State of _____ 19 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 112</p> <p>1 _____ was not requested by the deponent or a 2 party before the completion of the deposition. 3 I further certify that I am neither attorney nor 4 counsel for, nor related to or employed by any of the 5 parties to the action in which this deposition is 6 taken, and further that I am not a relative or 7 employee of any attorney or counsel employed by the 8 parties hereto, or financially interested in the 9 action.</p> <p>10 11 IN WITNESS WHEREOF, I have hereunto set my hand 12 this _____ day of _____, 2020.</p> <p>13 14 15  16 DEBORAH A. COPELAND, CSR 5730 17 Expiration Date: 7/31/22 18 VERITEXT LEGAL SOLUTIONS 19 Veritext Registration No. 571 20 300 Throckmorton Street, Suite 1600 21 Fort Worth, Texas 76102 22 817.336.3042 23 800.336.4000 24 Job No. 4007891 25</p>
<p style="text-align: right;">Page 111</p> <p>1 STATE OF TEXAS X 2 COUNTY OF DALLAS X 3</p> <p>4 I, Deborah A. Copeland, a Certified 5 Shorthand Reporter duly commissioned and qualified in 6 and for the State of Texas, do hereby certify that 7 there came before me on the 27th day of February, 8 2020, in the offices of Gibson Dunn & Crutcher, 9 located at 2001 Ross Avenue, in the City of Dallas, 10 State of Texas, the following named person, to-wit: 11 MATTHEW SHOEMAKE, who was duly sworn to testify the 12 truth, the whole truth, and nothing but the truth of 13 knowledge touching and concerning the matters in 14 controversy in this cause; and that he was thereupon 15 examined upon his oath and his examination reduced to 16 typewriting under my supervision; that the deposition 17 is a true record of the testimony given by the 18 witness.</p> <p>19 I further certify that pursuant to FRCP Rule 20 30(e) that the signature of the deponent: 21 _____ was requested by the deponent or a party 22 before the completion of the deposition, and that 23 signature is to be before any notary public and 24 returned within 30 days from date of receipt of the 25 transcript:</p>	<p style="text-align: right;">Page 113</p> <p>1 COUNTY OF DALLAS) 2 STATE OF TEXAS) 3</p> <p>4 I hereby certify that the witness was notified on 5 _____ that the witness has 30 days or (____ 6 days per agreement of counsel) after being notified by 7 the officer that the transcript is available for 8 review by the witness and if there are changes in the 9 form or substance to be made, then the witness shall 10 sign a statement reciting such changes and the reasons 11 given by the witness for making them; 12 That the witness' signature was/was not returned 13 as of _____.</p> <p>14 Subscribed and sworn to on this, the _____ day of 15 _____, 2020.</p> <p>16 17  18 DEBORAH A. COPELAND, CSR 5730 19 Expiration Date: 7/31/22 20 VERITEXT LEGAL SOLUTIONS 21 Veritext Registration No. 571 22 300 Throckmorton Street, Suite 1600 23 Fort Worth, Texas 76102 24 817.336.3042 25 800.336.4000 Job No. 4007891</p>

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1 Neema Jalali, Esquire
2 njalali@gibsondunn.com
3 March 10, 2020
4 Warp Tech Limited Partnership Et Al. v. Seattle Spinco Inc.
5 2/27/2020, Matthew Shoemake (#4007891)
6 The above-referenced transcript is available for
7 review.
8 Within the applicable timeframe, the witness should
9 read the testimony to verify its accuracy. If there are
10 any changes, the witness should note those with the
11 reason, on the attached Errata Sheet.
12 The witness should sign the Acknowledgment of
13 Deponent and Errata and return to the deposing attorney.
14 Copies should be sent to all counsel, and to Veritext at
15 cs-midatlantic@veritext.com
16
17 Return completed errata within 30 days from
18 receipt of testimony.
19 If the witness fails to do so within the time
20 allotted, the transcript may be used as if signed.
21
22 Yours,
23 Veritext Legal Solutions
24
25

30 (Page 114)

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1	12 19:4 23:24	1b 70:1	30 4:15 5:18,18,18 111:20,24 113:5
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Texas Rules of Civil Procedure
Part II, Section 9, Evidence and Discovery
Rule 203

203.1 Signature and Changes.

(a) Deposition transcript to be provided to witness. The deposition officer must provide the original deposition transcript to the witness for examination and signature. If the witness is represented by an attorney at the deposition, the deposition officer must provide the transcript to the attorney instead of the witness.

(b) Changes by witness; signature. The witness may change responses as reflected in the deposition transcript by indicating the desired changes, in writing, on a separate sheet of paper, together with a statement of the reasons for making the changes. No erasures or obliterations of any kind may be made to the original deposition transcript. The witness must then sign the transcript under oath and return it to the deposition officer. If the witness does not return the transcript to the deposition officer within 20 days of the date the transcript was provided to the witness or the

witness's attorney, the witness may be deemed to have waived the right to make the changes.

(c) Exceptions. The requirements of presentation and signature under this subdivision do not apply:

(1) if the witness and all parties waive the signature requirement;

(2) to depositions on written questions; or

(3) to non-stenographic recordings of oral depositions.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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